

# **Nebraska Grape and Winery Board**

## **Annual Report 2017**

**For information contact:**

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# **BOARD OF DIRECTORS**



# Nebraska Grape and Winery Board of Directors

**Max McFarland (Chair)** .....Winery/Vineyard Owner  
43315 Rd 757  
Lexington, NE 68850  
(308) 324-0440  
max@macscreekvineyards.com

**Bart Holmquist (Vice-Chair)** .....Vineyard Owner  
1333 Prairie View Rd  
Eagle, NE 68347  
(402) 310-9338  
bart2@windstream.net

**Terry Ryan (Secretary/Treasurer)** .....Vineyard Owner  
#1 El Charman Lake Place  
Gibbon, NE 68840  
(308) 830-0775  
lake1ryan@rcom-ne.com

**Ellen Burdick** .....Winery/Vineyard Owner  
5052 Rd 197  
Lewellen, NE 69147  
(308) 778-5543  
17ranch@scottsbluff.net

**Dave Hanna** .....Vineyard Owner  
75137 Hwy 283  
Lexington, NE 68850  
(308) 324-6094  
hannadave@live.com

## Ex-Officio Members

Casey Foster

Nebraska Department of Agriculture, P.O. Box 94947, Lincoln, NE 68509-4947  
(402) 471-4876 casey.foster@nebraska.gov

Hector L. Santiago Anadon, Ph.D.

Assistant Dean and Assistant Director

207 Agricultural Hall, P.O. Box 830704, Lincoln, NE 68583-0704  
(402) 472-7129 hsantiago@unl.edu





# **OVERVIEW OF ACTIVITIES**



## EXECUTIVE SUMMARY

The Board of Directors held two meetings during the fiscal year. The year began July 1, 2016, and ended June 30, 2017. Emphasis was placed on supporting marketing and promotional activities and conducting research to assist in the betterment and development of Nebraska's grape and wine industry.

Board revenue originates from shipper license fees, crushed grape fees, and grape excise taxes. Revenue from these sources is remitted to the State Treasurer for credit to the Winery and Grape Producers' Promotional Fund. As in previous years, the revenue over the past several years has enabled the Board to fund several meaningful projects aimed at enhancing the competitiveness of Nebraska's grape and wine industry. Priority funding was given to marketing and research projects targeted at increasing the sales and production of Nebraska grapes and/or wines. The projects approved for funding totaled \$222,200; \$184,525.86 of this amount was submitted to the Nebraska Department of Agriculture (NDA) for reimbursement. For a complete list of all projects, and their respective amounts, please refer to the 2016 – 2017 fiscal report found in this report.

Promotion of Nebraska's grape and wine industry continues to be a primary goal of the Board. The Board helps the grape and wine industry in becoming a strong and important part of Nebraska's thriving economy. They stay abreast of recent legislation affecting Nebraska's grape and wine industry, supports Nebraska Winery and Grape Growers Association (NWGGA) activities, and works closely with the University of Nebraska – Lincoln to receive guidance and education based upon industry research.

This Annual Report includes the Board's strategic plan, meeting minutes, fiscal report, contracts, statutes, and other documents pertaining to Board matters. Documents and information pertinent to the Board's functions and history can also be found at <http://www.grapeandwineryboard.nebraska.gov>.



# **STRATEGIC PLAN**



# NEBRASKA GRAPE AND WINERY BOARD

## STRATEGIC PLAN

MAY 2017

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# Nebraska Grape and Winery Board Strategic Plan

## Introduction and Process

This Strategic Plan marks the second plan developed by the Nebraska Grape and Winery Board (NGWB) since its inception in 2000. The Board of Directors, in collaboration with the Nebraska Department of Agriculture, developed this Strategic Plan. It provides the NGWB with a three to five year road map, guiding the board's decision and prioritization of issues upon which to focus efforts and resources. This Plan is intended to be a living, dynamic document subject to change or modification with new and/or additional input and the evolution of the industry and, thus, the board's vision. The board will review progress and update the plan annually or as needed. It is the intention of the board to, on an annual basis, identify priority items, actions, or objectives from each of the sections of this Strategic Plan to formulate the board's "Business Plan" for the year. This annual plan becomes the roadmap to guide and focus the board's efforts in the development of annual goals for implementation.

## Structure

The board began by revisiting and reaffirming their belief in the Mission of the NGWB, which was first developed in the 2010 Strategic Planning process.

The Mission is followed by major areas of emphasis (Goals), which the board has identified. When it comes to prioritization, all five of these Goals are concurrently considered with equal and continuous focus of this board. However, when it involves board- funding allocation, the board has committed to Goal #1 as its highest priority. Additionally, each goal contains one or more specific action items or objectives. It was determined by the board that these objectives would not be prioritized. Instead, these objectives will be reviewed annually and potentially expanded upon to be considered in the board's annual prioritization process.

This document is not intended to be a stand-alone document nor is it a one-time effort. Once action strategies have been developed and implemented, commitment will be maintained, progress monitored, and adjustments made until the objectives have been reached. This plan demonstrates the commitment that is needed to provide an excellent standard of programs and budget allocations designed to continuously meet the needs of the industry.

Finally, this document functions within the greater context of additional entities and initiatives that impact the Nebraska grape and wine industry. This framework may be reflected in future Appendices attached to this document. Examples include, but are not limited to, the Nebraska Winery and Grape Growers Association's (NWGGA) Strategic Plan (2016), the most recent Industry Economic Impact Study (2015), and the Nebraska Grape Growers Survey.

## **Mission**

The NGWB's Mission statement is to work collaboratively towards a profitable, sustainable future that advances the interests of Nebraska's grape and wine industry through advocacy and education.

The purpose of the NGWB is to further the growth and economic development of the grape-growing and winemaking industry in the state of Nebraska to a maximum level as supported by the favorable soil and climatic conditions existing in Nebraska and to satisfy the market demand for grapes and wine inside and outside of Nebraska. The end objective is to create an economically viable value-added alternative farm crop and wine industry in Nebraska that will enhance the economic condition of the farm industry and the state of Nebraska.

The duties and responsibilities of the NGWB include, but are not limited to, the following:

- a. Establish a public forum whereby any producer of wine, grapes, or other wine-producing agricultural products has the opportunity, at least once annually, to discuss with the board its policy and procedures;
- b. Keep minutes of its meetings and other books and records which will clearly reflect all of the acts and transactions of the board and to make these records available for examination upon request by members of the public;
- c. Authorize and approve the Department of Agriculture's (NDA) expenditure of funds collected pursuant to section 53-304;
- d. Serve as an advisory panel to the Nebraska Liquor Control Commission in all matters pertaining to the wine industry; and
- e. Adopt and promulgate rules and regulations to carry out sections 53-301 to 53-305.

## **Board Goals**

### **I. Industry leadership/management**

Several goals of this Strategic Plan are dependent upon a strong collaborative relationship between the NGWB and the "action arm" of the state industry. This includes the NWGGA, which is the association that exclusively represents the Nebraska wine and grape industry. The accomplishment of these goals is not feasible without the continuity and consistency of vision across years of changing leadership of the state's industry. Supporting and funding NWGGA's Executive Director position is the board's highest priority.

### **II. Promotion of Nebraska wines**

Promotion aims to establish a significant and differentiated presence in the market that attracts and retains loyal customers. It is the process involved in creating a unique name and image for a product in the consumer's mind, mainly through advertising campaigns with a consistent theme. This is accomplished by raising the Nebraska wine industry, and, thus, Nebraska wines, to a level of becoming knowable, likable and trustable.

Objectives:

1. Increasing the Marketability, Awareness and Accessibility of Nebraska Grapes and Wines

Strategies:

- a. Serve as an advocate for the industry.
  - b. Develop brand recognition for Nebraska wines.
  - c. Cooperation with the NWGGA to conduct intensive marketing strategies to promote the quality and value of Nebraska wines.
2. Encourage Wine Tourism
    - a. Encourage wine related tourism developments by working with the Nebraska Tourism Commission.

### III. Sustainability

This goal is all about assuring the capacity of the grape and wine industry to remain vibrant and robust through the enology and viticulture components. Sustainable development of the industry is "development that meets the needs of the present without compromising the ability of future generations to meet their own needs" (UN World Commission on Environment and Development, 1987). Sustainability in the vineyard encompasses a whole host of topics including, but not limited to, cold climate grape cultivars, plant science, soil type, soil amendments, pest and weed control, irrigation, trade enhancements, food safety, best management practices, crop research, and conservation methods. Sustainability also pertains to wine quality. Winemakers will tell you that outstanding wine is made on the vine. However, when it comes to getting the "wine into your glass, it's all about the winery" (Borg, 2013).

Objectives:

1. Enhancing the Quality of Wines

Strategies:

- a. Implement measures aimed at building a strong, vibrant industry that includes the production of world-class wines made from world-class grapes.
- b. Develop a Quality Assurance process based on industry standards to identify quality wine, improve winemaking practices and continue to raise the quality of wine across the entire state industry.
- c. Identify exceptional wines to create awareness of the quality of Nebraska wines with consumers while promoting the best of the Nebraska wine industry.

- d. Support education opportunities to improve winemaking skills and processes.

## 2. Enhancing the Quality of Grapes

### Strategies:

- a. Address threats to the grape growing industry (e.g., herbicide drift, resistant pesticides, climate conditions, etc.).
  - b. Support education opportunities to improve cold climate cultivar selection, growing techniques, and management practices.
  - c. Identify cost-effective strategies to improve the value/benefits of Nebraska grapes and wines.
  - d. Survey growers and winemakers to determine which grapevine cultivars appear to be most profitable and successful.
  - e. Determine hardy grape cultivars adaptive to Nebraska's soils and climate extremes.
3. Education: Promote the creation and discovery of new production practices by funding various projects and activities.
- a. Attend educational conferences.
  - b. Fund research projects.
  - c. Disseminate research findings to the public.
  - d. Support and partially fund grower field day and conferences.
  - e. Solicit and fund proposals to enable industry partners to enhance programs and the industry.
  - f. Continue as an active partner with the NWGGA, which works to develop and organize the annual Association Education Conference.
4. Develop a culture of continuous improvement:
- a. Engage the board to develop and annually review and renew the Strategic Plan every three years (or more frequently as needed).
  - b. Gain industry feedback and advice and identify areas for constructive improvement.
  - c. Analyze other state-based farmer organizations and non-profit membership associations.

## IV. Maintaining Financial Viability and Revenue of the Grape and Winery Board

Crushed juice fees, grape excise taxes, and shipper license fees are the three primary sources from which the board obtains its revenue. For administrative purposes, these funds are located in NDA. All revenue credited to the fund pursuant to the charge imposed by this section and excise taxes collected pursuant to section 2-5603 and any funds received as gifts, grants, or bequests and credited to the fund is used by NDA at the direction of and in cooperation with the board, to develop and maintain programs for the research and advancement of the growing,

selling, marketing, and promotion of grapes, fruits, berries, honey, and other agricultural products and their byproducts grown and produced in Nebraska for use in the wine industry. Such expenditures may include, but are not limited to, all necessary funding for the employment of experts in the fields of viticulture and enology, as deemed necessary by the board, and programs aimed at improving the promotion of all varieties of wines, grapes, fruits, berries, honey, and other agricultural products and their byproducts grown and produced in Nebraska for use in the wine industry.

Funds credited to the fund shall be used for no other purposes than those stated in this section and any transfers authorized pursuant to section 2-5604. Any funds not expended during a fiscal year may be maintained in the fund for distribution or expenditure during subsequent fiscal years. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

The responsibilities of the board have increased largely due in part to the number of projects funded each year. In an effort to enhance the accountability and reporting requirements of board-funded projects, the board allocates money to pay the salary of a part-time clerical assistant to assist with board duties. This individual is under the direction of the NDA.

Objective:

1. Investigate and implement programs utilizing diversified funding sources that continue to build and grow Nebraska's grape and wine industry.
  - a. Develop a financial plan.
  - b. Formalize, enhance and evaluate board-funded projects from one year to the next.
  - c. Review income performance on a monthly basis and develop a strategy to enhance financial relationships and secure board revenue.
  - d. Review existing financial processes and identify new and improved approaches to identify and explore cost savings.
  - e. Prepare and position NGWB to fund ideas towards new research and different marketing strategies that will benefit the entire grape and wine industry, in general, and not a particular business venture.
  - f. Expend approximately 70 percent of NGWB annual revenue on meaningful projects aimed at improving grape and wine research and promoting the entire industry.
  - g. Collect and compile final reports in a timely manner from board-funded projects.
  - h. Evaluate the efficacy of final reports as to how they relate to the Strategic Plan.

## V. Collaboration/Communication

Today, global success is won not by firms acting alone, but by partnerships that promote joint planning, information sharing, open communication, collaboration and cooperation. A central challenge for the Nebraska wine industry is to continue cooperation and financial support to the NWGGA, which has been a pillar of strength for Nebraska's grape and wine industry. This partnership entails balancing individual mandates with the opportunities for promotion and research. This goal involves the board advocating for the industry, with entities both within the industry and those external to the industry.

### Objectives:

1. Encouraging Wine Tourism
  - a. Encourage wine related tourism developments by working with the Nebraska Tourism Commission and the NWGGA.
2. Stay abreast of recent legislation and recent developments affecting Nebraska's grape and wine industry.
  - a. Maintain, increase and improve relationships with local, state, and federal lawmakers.
3. Maintain and increase NGWB agricultural partnerships
  - a. Define industry needs and develop cost-effective strategies to improve value/benefits across all members.
  - b. Survey, evaluate, and develop a database of Nebraska grape growers and wineries.
  - c. Establish, maintain and update a list recording the total grape acreage and number of vines (variety specific) planted in Nebraska.
  - d. Engage into close working relationships with NDA, UNL, NWGGA and other entities or organizations that impact Nebraska's agricultural industry, (grape and wine industry in particular).
4. Advocacy
  - a. Increase awareness of the Nebraska grape/wine industry with entities both within the industry and those external to the industry.
  - b. Monitor and review the efficacy of the NGWB website on a monthly basis.
5. Make and publish an annual report on or before January 1 of each year, which sets forth, in detail, several items:
  - a. The name and address of each board member and a copy of all rules and regulations adopted and promulgated by the board.
  - b. A detailed explanation of all programs for which the board approved funding that fiscal year, pursuant to section 53-304, for the research, discovery, promotion, and development of programs for the growing, production and marketing of Nebraska wines, grapes,, fruits, berries, honey and other agricultural product and their byproducts grown and produced in Nebraska for use in the wine industry.

- c. Present the report to the Nebraska Liquor Control Commission within 30 days after its publication and made available also to any persons who request a copy.

### **Monitor and Update the Plan**

This strategic framework is a plan of optimism and opportunity for all stakeholders in the industry, and is grounded in the realities facing the industry today. It identifies how the grape and wine industry can maximize long-term profitable growth in the industry, reinvent consumer's total experience with Nebraska wines, and increase tourism. The success of this plan hinges on industry partners embracing and sharing this vision and transforming the above strategies into key deliverables.

Consequently, each participant in the vision must assume responsibility, which includes assigning the resources needed to fulfill the promise that is shared by this board. Nebraska wines are a source of passion and pride, and perhaps the most important indicator of success is positive feedback from grape growers, wineries, scientists, and wine enthusiasts. Positive feedback from consumers and the growing reputation of Nebraska wines is sure to soar the industry to new heights.

This strategic framework provides the foundation stones for achieving long-term profitable growth. This document is subject to change with new and/or additional input. Commitment will be maintained, progress will be monitored, and adjustments will be made until the objectives are reached.

### **The Board's Commitment**

The appointed leaders of the NGWB agree to the above stated principles and actions to accomplish the objective of keeping the industry strong, vibrant, and productive. The board accepts these responsibilities and roles of proactive leaders with a common goal and vision to secure the future of the board. All five board members and the two ex-officio members have a copy of this plan. Copies are also available to industry stakeholders, upon request.

### **Conclusion**

The grape and wine industry in Nebraska is poised for greatness. The destination is clear. People at every level in the industry including growers, winemakers, academia, government, and marketers have assembled together ready to adapt this focused plan with the concerted, cooperative action needed to win a prosperous future for Nebraska wines.





# **MEETING MINUTES**



**Nebraska Grape and Winery Board Meeting Minutes**  
**Chances “R” Restaurant & Lounge**  
**124 W 5<sup>th</sup> Street**  
**York, Ne 68467**  
**November 17, 2016**  
**6:30 p.m.**

Board Members Present:           Max McFarland, Chair  
  Terry Ryan, Secretary/Treasurer  
  Dave Hanna  
  Ellen Burdick via internet video

Ex-Officio Members Present:       Casey Foster, Nebraska Department of Agriculture  
Board Services Contractor Present: Ruth Anderson

Absent:                               Bart Holmquist, Vice Chairman

Guests Present:                     Steve Gamet, University of Nebraska – Lincoln  
  Lori Paulsen, NWGGA Executive Director

**Call to Order**

Max McFarland called the meeting to order at 6:30 p.m.

**Roll Call**

Present: Max, Terry, Dave, and Ellen via video  
Absent: Bart

**Open Meetings Act**

Public notice of this meeting was published in  
*The Norfolk Daily News 11/07/16, Star Herald 11/10/16, North Platte Telegraph 11/10/16, Beatrice Daily Sun 11/09/16 and Grand Island Independent 11/10/16 (at least 7 days prior to the meeting).*

**Approval of Agenda**

The agenda was reviewed by the Board. Terry made a motion to approve the agenda, Dave second the motion. Motion carried.

**Approve Minutes of May 17, 2016 Meeting**

Dave made the motion to approve the minutes. Terry second the motion. Motion carried.

**Public Comments**

Lori Paulson, representing the NWGGA, wanted to Thank the NGW Board for their continued support.

## **Old Business**

The current "Strategic Plan" was reviewed and discussed.

The board will take the existing plan and focus on "goals" by ranking and prioritizing, revamping and modifying the goals.

The information should be reported back to Max by email before Jan. 1, 2017.

Max made the motion to proceed, with a second by Ellen. Motion carried.

A copy of the 2016 Annual Report was emailed out to every board member prior to the meeting for their review.

Dave made a motion to approve the Annual Report. Terry second the motion.

Motion carried.

Max made a motion to approve to print 70 copies of the Annual Report, Dave second the motion.

Motion carried.

Other: Dave made a motion to revise the final report requirements. Casey and Max will oversee making revisions with approval of the board. Terry second the motion. Motion carried.

## **New Business**

Casey handed out the Board's 2015-2016 fiscal year-end summary.

Dave made a motion to approve the fiscal report, Terry second the motion.

Motion carried.

A motion was made by Dave to approve the October Fiscal report as presented. Ellen second the motion. Motion carried.

2016-2017 fiscal year was discussed. Funding for RFP's will be on hold this year. Limited invoices will be distributed as funding is available.

## **Other Business**

The next board meeting will be decided at a later time.

## **Adjourn**

Terry made a motion to adjourn the meeting. The motion was seconded by Dave. Motion carried. The meeting adjourned at 10:00 p.m.

**Nebraska Grape and Winery Board Meeting Minutes  
Hunter's Lounge  
311 Midland Rd  
Waco, Ne 68460  
May 9, 2017  
6:00 p.m.**

Board Members Present: Max McFarland, Chair  
Bart Holmquist, Vice Chairman  
Terry Ryan, Secretary/Treasurer  
Dave Hanna  
Ellen Burdick

Ex-Officio Members Present: Casey Foster, Nebraska Department of Agriculture  
Board Services Contractor Present: Ruth Anderson

Absent: Terry Ryan (present at 6:30)

Guests Present: Professor Paul Read, UNL – Lincoln  
Lori Paulsen, NWGGA Executive Director  
Theresa McFarland, President NGWWA

**Call to Order**

Max McFarland called the meeting to order at 6:10 p.m.

**Roll Call**

Present: Max, Bart, Dave, Terry, and Ellen

**Open Meetings Act**

Public notice of this meeting was published in  
*The Norfolk Daily News 4/26/17, Star Herald 4/26/17, North Platte Telegraph 4/29/17, Beatrice Daily Sun 4/26/17 and Grand Island Independent 4/26/17 (at least 7 days prior to the meeting).*

**Approval of Agenda**

The agenda was reviewed by the Board. Bart made a motion to approve the agenda, Dave second the motion. Motion carried.

**Approve Minutes of November 17, 2016 Meeting**

Dave made the motion to approve the minutes. Bart second the motion. Motion carried.

**Public Comments**

Ellen suggested to move the fall meeting to coordinate with a scheduled fall conference.

**Old Business**

The revised Strategic Plan was available for review. Discussion was held. Dave made a motion to amend the word “Branding” to the word “Promotion.” Ellen second the motion. Motion carried. Dave made a motion to approve the Strategic Plan as amended. Ellen second the motion. Motion carried.

Professor Paul Read and the NWGGA requested funding for their upcoming viticulture programs and projects, Both provided an update on their current projects. Details of the NWGGA report are attached to these minutes.

Casey Foster gave a report on the Food Safety Modernization Act and the Produce Safety Rule. Wine grapes for eating are covered under the law, but wine grapes used in the making of wine are eligible for exemptions from the PSR. For more details, go to <http://www.nda.nebraska.gov/producesafety/wine-grape-booklet.pdf>.

Later this month, NDA will submit an application to USDA to receive \$598,830.42 in Specialty Crop Block Grant Program funds to support projects that will solely enhance the competitiveness of U.S. or U.S. territory-grown specialty crops in either domestic or foreign markets.

NDA utilized a two-phase competitive grant process to determine which projects were to be included in their 2017 application. The first phase was the development of a Concept Proposal. This step allowed applicants to explain the main points of their project. Concept Proposals were due to NDA March 1<sup>st</sup>. Once Concept Proposals were received and the submission deadline had expired, NDA performed an initial internal screening and business evaluation on the proposals to determine if they should be sent on for evaluation by the SCBGP Field Review Panel. This internal evaluation was used to determine whether the submitted Concept Proposals met SCBGP grant eligibility requirements and to assess all applicants’ past grant performances (if any). A total of 29 proposals were received, 2 of which did not pass the internal screening process because they were unacceptable projects.

The panel made recommendations to the Director of Agriculture as to which applicants should be invited to the second phase of the grant process, which included submission of a Grant Proposal. The Director selected 12 projects, two of which included NWGAA proposals. Applicants invited to Phase II were required to participate in a webinar hosted by NDA. The webinar was held on March 31<sup>st</sup> at 10:00 a.m. (Central Time) and provided instructions on how to write a Grant Proposal. NDA anticipates that all of the proposals included in their application will be approved for funding.

## **New Business**

Casey handed out the April fiscal year report for 2016-2017.  
Bart made a motion to approve the fiscal report, Terry second the motion.  
Motion carried.

Budget shortfall was discussed.

Terry made a motion to change the payment method for UNL projects to a cost-reimbursement basis. Payments will be made upon the availability of funds. Ellen second the motion. Motion carried.

The budget was discussed and set for 2017-2018 fiscal year. Projects selected for funding primarily focused on promotion and research. Additional expenses were allocated to pay for administrative expenses. It was estimated that the board’s total available cash on June 2018 will equal

\$323,448.63; total expenditures will amount to \$319,616. A motion was made by Dave to approve the budget, Terry second the motion. Motion carried.

**Other Business**

The next board meeting will be decided later in the year.

**Adjourn**

Bart made a motion to adjourn the meeting. The motion was seconded by Terry. Motion carried. The meeting adjourned at 10:00 p.m.

**NWGGA Grant Report for NGWB meeting – May 9, 2017**

**Submitted by Lori Paulsen, Executive Director  
Nebraska Winery & Grape Growers Association**



**18-13-281 NWGGA Operations/Executive Director**

**Total**

**r year \$86,420**

**NO UTILIZED FUNDS**

This grant is being utilized by the NWGGA to fund the operations of the NWGGA as well as the salary and benefits of the association’s full-time Executive Director. The Executive Director continues to advance the goals of the NWGGA strategic plan by:

- managing member relations including regular communications with members
- recruiting new members
- Working with all committees
- Facilitating Vindemia planning along with the committee members
- acting as NWGGA media spokesperson
- overseeing marketing efforts
- representing the NWGGA at industry activities
- working on Toast Nebraska 2018
- outreach to other commodity groups and associations
- working with NWGGA lobbyists to monitor legislation
- Planning all events of the Association including Legislative Day, Legislative Reception, Board Meetings
- Providing administrative support for the association
- handling winery buck redemptions for the Passport program
- speaking at public events and conferences

**18-13-283 NWGGA National Industry Organization**

**\$2,600**

**PROJECT COMPLETE – REPORT SUBMITTED**

**Total YTD \$2,260.88**

**Unutilized funds - \$338.12**

This grant was utilized by the NWGGA to fund the membership and involvement in WineAmerica, the national organization representing the wine industry. These funds are used for membership fees and travel for the Executive Director to attend November 2016 WineAmerica Policy and Membership meeting Portland, OR and The information learned at these meetings is communicated to all NWGGA members upon return via the NWGGA Facebook page for members only as well as in the NWGGA Quick News.

### **18-13-282 NWGGA Marketing Program**

**\$27,380**

**Total YTD \$11,341.01**

**ESTIMATED Unutilized funds - \$0**

This project has included the prizes for the 2016 NWGGA Nebraska Wine Passport and the creation of the 2017 Nebraska Wine Passport.

We received 621 of the 2016 Nebraska Wine Passports back. A total of 109 completed all stops and received the \$75 in wine bucks, a corkscrew and a wine tote bag. Approximately 169 completed the 14 stops and received a corkscrew and bag. Approximately 34 completed a stop in every region and received a bag and about 310 did not get a prize but is entered into the grand prize drawing. This total is about 70 less than 2015 and about 225 more than 2014 returned passports. We distributed 28,000 Passports in 2016.

The 2017 Nebraska Wine Passport was produced in January and there were 10,000 passports distributed to all participating wineries and tasting rooms. The NWGGA will participate in the Nebraska Travel Association's Brochure Swap in May where about 10,000 passports will be distributed to convention and visitors bureaus, rest areas and attractions throughout the state. The remaining passports will be used for events and other promotional opportunities throughout the summer as well as stock to replenish passports for wineries and tasting rooms.

The prizes for the 2017 program include corkscrews, wine bags and \$50 in wine bucks if a participant completes all stops. The prize money for the 2017 program would be requested from the FY 2017-18 grape board funds.

The NWGGA Board determined to not spend the additional marketing dollars this year in anticipation of possible budget issues.

### **18-13-304 NWGGA Conference Planning**

**\$4,000**

**PROJECT COMPLETE – REPORT SUBMITTED**

**Total YTD \$3,947.06**

**Unutilized funds - \$58.47**

The NWGGA appointed a conference planning committee and the committee held their meeting in November 2016 in Nebraska City at the Lied Lodge and Conference Center. The committee determined that the event will be held on October 22-24, 2017 at the Lied Lodge and the committee meeting yielded the name of the event, Vindemia, as well as a logo, topics and a complete conference schedule, as well as speakers, exhibitors and social events.

In early April, the web site [www.vindemiane.com](http://www.vindemiane.com) went live and we now have 21 people registered and 20 exhibitors. Additional marketing will occur in the next few months and we anticipate a total of 150-200 attendees.

These meetings is communicated to all NWGGA members upon return via the NWGGA Facebook page for members only as well as in the NWGGA Quick News..



## **18-13-228 Wine QA**

**\$7,600**

**NO PROJECT FOR THIS YEAR**

**Unutilized funds - \$7,600**

Due to budget limitations, it was determined not to execute this project during the FY2016-17 and therefore all funds will remain unused.

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**Total Allocated to NWGGA \$128,000**

**Total anticipated to be unutilized**

- **\$58.47 conference planning**
- **\$0 marketing, depending upon wine bucks**
- **\$338.12 National Industry Organization Meetings**
- **\$7,600 Wine QA**

**Total unutilized \$7,696.59**

## **NWGGA Grant Report for NGWB meeting – May 9, 2017**

**Submitted by Lori Paulsen, Executive Director**

**Nebraska Winery & Grape Growers Association**



## **18-13-281 NWGGA Operations/Executive Director**

**Total**

**r year \$86,420**

**NO UTILIZED FUNDS**

This grant is being utilized by the NWGGA to fund the operations of the NWGGA as well as the salary and benefits of the association's full-time Executive Director. The Executive Director continues to advance the goals of the NWGGA strategic plan by:

- managing member relations including regular communications with members
- recruiting new members
- Working with all committees
- Facilitating Vindemia planning along with the committee members
- acting as NWGGA media spokesperson
- overseeing marketing efforts
- representing the NWGGA at industry activities
- working on Toast Nebraska 2018
- outreach to other commodity groups and associations
- working with NWGGA lobbyists to monitor legislation
- Planning all events of the Association including Legislative Day, Legislative Reception, Board Meetings
- Providing administrative support for the association
- handling winery buck redemptions for the Passport program
- speaking at public events and conferences

**18-13-283 NWGGA National Industry Organization \$2,600**

**PROJECT COMPLETE – REPORT SUBMITTED**

**Total YTD \$2,260.88**

**Unutilized funds - \$338.12**

This grant was utilized by the NWGGA to fund the membership and involvement in WineAmerica, the national organization representing the wine industry. These funds are used for membership fees and travel for the Executive Director to attend November 2016 WineAmerica Policy and Membership meeting Portland, OR and The information learned at these meetings is communicated to all NWGGA members upon return via the NWGGA Facebook page for members only as well as in the NWGGA Quick News.

**18-13-282 NWGGA Marketing Program \$27,380**

**Total YTD \$11,341.01**

**ESTIMATED Unutilized funds - \$0**

This project has included the prizes for the 2016 NWGGA Nebraska Wine Passport and the creation of the 2017 Nebraska Wine Passport.

We received 621 of the 2016 Nebraska Wine Passports back. A total of 109 completed all stops and received the \$75 in wine bucks, a corkscrew and a wine tote bag. Approximately 169 completed the 14 stops and received a corkscrew and bag. Approximately 34 completed a stop in every region and received a bag and about 310 did not get a prize but is entered into the grand prize drawing. This total is about 70 less than 2015 and about 225 more than 2014 returned passports. We distributed 28,000 Passports in 2016.

The 2017 Nebraska Wine Passport was produced in January and there were 10,000 passports distributed to all participating wineries and tasting rooms. The NWGGA will participate in the Nebraska Travel Association's Brochure Swap in May where about 10,000 passports will be distributed to convention and visitors bureaus, rest areas and attractions throughout the state. The remaining passports will be used for events and other promotional opportunities throughout the summer as well as stock to replenish passports for wineries and tasting rooms.

The prizes for the 2017 program include corkscrews, wine bags and \$50 in wine bucks if a participant completes all stops. The prize money for the 2017 program would be requested from the FY 2017-18 grape board funds.

The NWGGA Board determined to not spend the additional marketing dollars this year in anticipation of possible budget issues.

**18-13-304 NWGGA Conference Planning \$4,000**

**PROJECT COMPLETE – REPORT SUBMITTED**

**Total YTD \$3,947.06**

**Unutilized funds - \$58.47**

The NWGGA appointed a conference planning committee and the committee held their meeting in November 2016 in Nebraska City at the Lied Lodge and Conference Center. The committee determined that the event will

be held on October 22-24, 2017 at the Lied Lodge and the committee meeting yielded the name of the event, Vindemia, as well as a logo, topics and a complete conference schedule, as well as speakers, exhibitors and social events.

In early April, the web site [www.vindemiane.com](http://www.vindemiane.com) went live and we now have 21 people registered and 20 exhibitors. Additional marketing will occur in the next few months and we anticipate a total of 150-200 attendees.

these meetings is communicated to al NWGGA members upon return via the NWGGA Facebook page for members only as well as in the NWGGA Quick News..

**18-13-228 Wine QA**

**\$7,600**

**NO PROJECT FOR THIS YEAR**

**Unutilized funds - \$7,600**

Due to budget limitations, it was determined not to execute this project during the FY2016-17 and therefore all funds will remain unused.

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**Total Allocated to NWGGA** **\$128,000**

**Total anticipated to be unutilized**

- **\$58.47 conference planning**
- **\$0 marketing, depending upon wine bucks**
- **\$338.12 National Industry Organization Meetings**
- **\$7,600 Wine QA**

**Total unutilized** **\$7,696.59**



# **2016-2017 FISCAL REPORT**



**WINE \$ GRAPE PRODUCTION PROMOTION BOARD**  
**JULY 1, 2016 – JUNE 30 2017**

<b>DESCRIPTION</b>	<b>FY2016-17 BUDGET</b>	<b>JUNE 2017</b>	<b>FY2016-17 YR-TO-DATE</b>
BEGINNING CASH BALANCE	\$ 45,286	\$140,139.37	\$45,286.39
REVENUE			
Shipper License Fees	\$180,000	\$3,500.00	\$236,500.00
Check-Off Fees	\$8,000	\$0.00	\$8,454.80
Crushed Grape Fees	\$14,000	\$0.00	\$17,197.70
Investment Interest	\$2,000	\$282.53	\$1,388.92
Total Revenue	\$204,000	\$3,782.53	\$263,541.42
 TOTAL AVAILABLE CASH	 \$249,286	 \$143,921.90	 \$308,827.81
EXPENDITURES			
Printing (Annual Report)	\$700	\$10.18	\$413.15
Room Rental	\$300	\$0.00	\$0.00
NDA Fee Collection	\$3,000	\$0.00	\$2,120.29
<b>NWGGA Contracts</b>			
Executive Mgmt Services	\$84,420	\$7,201.54	\$84,968.14
Educational Conference Planning	\$4,000	\$481.78	\$3,928.84
Marking Plan/Passport	\$37,380	\$2,470.00	\$17,355.98
Nt'l Industry Org. Activities	\$2,600	\$0.00	\$2,000.80
<b>Mac's Creek</b>			
Ozone Project (Lexington)	\$5,900	\$0.00	\$0.00
<b>UNL Contracts</b>			
Viticulture Prgm/Lab Technician	\$62,200	\$9,031.45	\$58,194.46
Viticulture (FY 15-16)	\$0.00	\$0.00	\$7,846.25
<b>Contracts (Misc.)</b>			
Wine Quality Assurance Prgm	\$7,600	\$0.00	\$0.00
Journal Communications (Ad)	\$3,000	\$0.00	\$0.00
<b>Board Assistant</b>	\$5,100	\$425.00	\$5,100.00
<b>Board Expense</b>	\$4,000	\$0.00	\$2,597.95
Total Expenditures	\$222,200	\$19,619.95	\$184,525.86
 Adjustment to Fund Balance	 \$0.00	 \$0.00	 \$0.00
 ENDING CASH BALANCE	 \$27,086	 \$124,301.95	 \$124,301.95





# CONTRACTS



**AGREEMENT**  
**BETWEEN THE**  
**NEBRASKA DEPARTMENT OF AGRICULTURE**  
**AND THE**  
**BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA ON BEHALF**  
**OF THE UNIVERSITY OF NEBRASKA – LINCOLN**

**#18-13-227**

This Agreement is entered into by and between the Nebraska Department of Agriculture, (hereafter “Department”) and the Board of Regents of the University of Nebraska on behalf of the University of Nebraska – Lincoln, (hereafter “Viticulture Program”).

**PURPOSE:** The purpose of this Agreement is to provide funding, as authorized by the Nebraska Grape and Winery Board, to the Viticulture Program to conduct research activities that are designed to assist in the betterment of Nebraska’s grape and wine industry.

**AUTHORITY:** This Agreement is being entered into pursuant to the Nebraska Grape and Winery Board statutes, Neb. Rev. Stat. §53-301 to 53-305 which provides the Winery and Grape Producers Promotional Fund to be used by the Department at the direction of, and in cooperation with, the Board to develop programs that promote the wine industry in Nebraska.

The Nebraska Grape and Winery Board has conducted a public board meeting and directed the Department to provide funds to the Viticulture Program.

THEREFORE, in consideration of the covenants herein contained, it is agreed by and between the parties hereto as follows:

**A. DESCRIPTION OF WORK**

1. The Viticulture Program agrees to the following:
  - a. Utilize grant funds to pay for the viticulture technician’s salary and benefits, lab technician’s salary and benefits, student hourly labor, fuel, vehicle rental, travel, indirect costs, hail netting, fertilizers, chemicals, and other vineyard supplies, These expenses are involved in the oversight and implementation of Viticulture Program activities.
  - b. The activities will consist of:
    - i. Cultivar and new genotype evaluation;

- ii. Multi-state project evaluating performance on a common set of grape cultivars in multiple locations;
  - iii. Stability of Frontenac Sports;
  - iv. Ground cover impact on new vineyard establishment;
  - v. Evaluation of cold-hardiness, spring bud-break, and cold temperature damage prevention and management;
  - vi. Mulch and ground cover studies;
  - vii. Research to determine the number of Growing Degree Days (GDD) required for specific cultivars to reach bud-break and the GDD number between bud-break and harvest;
  - viii. Disease and insect management;
  - ix. Hail damage prevention
  - x. Reduced pesticide input;
  - xi. Sustainable and potentially organic grape production projects; and
  - xii. Educational programming, including the Annual Forum, workshops, field days, and formal UNL courses.
- c. Provide a written final report to the Department by July 15, 2017. The report, which shall describe the results of the project and the use of funds, will be made public by the Nebraska Grape and Winery Board.
  - d. Provide services from July 1, 2016, through June 30, 2017.

## B. ALLOWABLE COSTS AND PAYMENTS

- 1. The Department will advance a sum of thirty-one thousand one hundred dollars (\$31,100) from the Winery and Grape Producers Promotional Fund to The Viticulture Program upon both parties' signature to this Agreement. The remaining thirty-one thousand one hundred dollars (\$31,100) will be paid to the Viticulture Program after incurring an obligation. The Viticulture Program shall present Interagency Billing Transaction (IBT) invoices to the Department from which payments shall be made.

2. Final Viticulture Program billing shall be received no later than July 15, 2017.
3. The source of funding for this Agreement is the Winery and Grape Producers Promotional Fund. Payment is contingent upon funding availability.
4. The Viticulture Program specifically agrees that funds provided under this Agreement shall be used only for the project and purposes enumerated herein.
5. Any funds paid to the Viticulture Program under this Agreement and not fully utilized and earned pursuant to this Agreement during the Agreement period shall be returned to the Department.

C. AGREEMENT PERIOD

The term of this Agreement is from **July 1, 2016, to July 15, 2017**, unless sooner terminated or completed as provided for in Section D.

D. AGREEMENT PROVISIONS

1. Termination:

- a. The Department may immediately terminate this Agreement, in whole or in part, if the Viticulture Program fails to perform its obligations under this Agreement in a timely and proper manner. The Department may, at its discretion, allow the Viticulture Program to cure a failure or breach within the Department's specified period of time. Allowing the Viticulture Program time to cure a failure or breach does not waive the Department's right to immediately terminate this Agreement for the same or different Agreement breach which may occur at a different time. In case of default of the Viticulture Program, the Department may contract from other sources and hold the Viticulture Program responsible for any excess cost occasioned thereby.
  - b. This Agreement may be terminated, at any time, upon mutual written consent of the parties, or by either party, with or without cause, upon thirty (30) days written notice to the other party. In the event of termination, the Department shall be under no further obligation to the Viticulture Program, except that the Department agrees to pay the Viticulture Program for the cost of services satisfactorily provided up to the date of termination, subtracting any additional costs caused by the Viticulture Program's termination.
2. Project Completion: The project will be deemed to be complete when to the Department's satisfaction the Viticulture Program completely and fully performs as outlined in Section A, or when funding is no longer available, whichever occurs first.

3. Complete Understanding: This Agreement incorporates the complete understanding of the parties. Any modification of the Agreement shall be in writing and executed by each party to be valid.
4. Relationship of Parties: The relationship of the Department and the Viticulture Program under this Agreement shall be that of principal and independent contractor. It is understood by both the Department and the Viticulture Program that the Viticulture Program is not an employee of the Department and that the Department assumes no responsibility beyond those specifically stated in this Agreement.
5. Assignable: This Agreement is not assignable without the express written approval of the Department.
6. Governing Law: This Agreement shall be governed in all respects by the laws and statutes of the State of Nebraska. Any legal proceedings against the Department regarding this Agreement shall be brought in the State of Nebraska administrative or judicial forums as defined by Nebraska State law.
7. Indemnification:
  - a. General. The Viticulture Program, to the extent allowable by Nebraska State Law, agrees to defend, indemnify, hold, and save harmless the Department and its employees, volunteers, agents, and its appointed officials (hereafter "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 (hereafter "claim"), sustained or asserted against the Department, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the Viticulture Program, its employees, subcontractors, consultants, representatives, and agents, except to the extent such liability is attenuated by any action of the Department which directly and proximately contributed to any claim. The obligation to indemnify shall survive the expiration or termination of this Agreement.
  - b. Personnel. The Viticulture Program shall, to the extent allowable by Nebraska State Law, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel provided by the Viticulture Program.
8. Authority to Enter Agreement: The Viticulture Program warrants the individual signing this Agreement has the legal power, right, and authority to enter into this Agreement and to bind the Viticulture Program accordingly.

9. **Attorney's Fees:** In the event of any litigation, appeal, or other legal action to enforce any provision of this Agreement, the Viticulture Program agrees to pay all expenses of such action, as permitted by law, including attorney's fees and costs, if the Department is the prevailing party.
10. **Severability:** If any term or condition of this Agreement 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 Agreement did not contain the particular provision held to be invalid.
11. **Penalty for Breach:** In the event that the Viticulture Program fails to perform any substantial obligation under this Agreement, the Department may withhold all monies due and payable to the Viticulture Program, without penalty, until such failure is cured or otherwise adjudicated.

#### E. RECORDS AND WORK PRODUCT PROVISIONS

1. **Records Available:** The books of account, files, and other records of the Viticulture Program which are applicable to this Agreement shall be made available in the State of Nebraska for inspection, review, copying, and audit by the Department and its representatives to determine the proper application and use of all funds paid to and for the account or benefits of the Viticulture Program. All records involving transactions related to this Agreement are to be maintained for a period of five (5) years from the date the term of this Agreement begins. If any litigation or audit is begun, or a claim is instituted involving the Agreement, the Viticulture Program shall retain the records beyond the five (5) year period until litigation, audit findings, or claim has been fully resolved and the Department has agreed that such records do not need to be retained.
2. **Auditing Standard:** The Department, under Auditing Standard A-133, will utilize a risk-based approach to review federal and state contract dollars expended to subrecipients. This may include the Viticulture Program providing recent audit reports to evaluate prior audit experiences and audit findings; Department review of subrecipient control environment; the Department requiring additional oversight reports; and the Viticulture Program providing copies of invoices detailing how the Department funds were expended.

#### F. COMPLIANCE PROVISIONS

1. **Nondiscrimination:**
  - a. The Viticulture Program, and any and all subcontractors, shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act, Neb. Rev. Stat. §§48-1101 to 48-1125, prohibits

contractors of the State of Nebraska, and their subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensations, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin. The Viticulture Program guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of this Agreement. The Viticulture Program shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from this Agreement.

- b. It is further understood and agreed, that if the Viticulture Program is in violation of this clause, it shall be immediately barred from receiving further funds, unless a satisfactory showing is made that discriminatory practices have terminated and that a recurrence of such act or action is unlikely.
2. ADA Compliance: All provisions under this Agreement are subject to the Americans with Disabilities Act.
3. Worker's Compensation: The Viticulture Program, and any and all subcontractors guarantee payment of compensation to injured workers according to the Nebraska Worker's Compensation Act which is valid for the life of the Agreement including any extensions of the Agreement.
4. Drug Free: The Viticulture Program, and any and all subcontractors shall have in force during the Agreement period, and available for inspection, a policy regarding a drug-free workplace. The policy shall contain: A statement notifying employees the unlawful manufacture, distribution, possession, or use of a controlled substance is prohibited; the specific actions that will be taken for violating the policy; and a requirement that each employee receive a copy of the policy.
5. Immigration Verification:
  - a. The Viticulture Program, and any and all subcontractors, 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 electronics 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 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 newly hired employees.
  - b. If the Viticulture Program is an individual or sole proprietorship, the Viticulture Program shall complete the United States Citizenship



Attestation Form available in the DAS website at <http://das.nebraska.gov/materiel/purchasing.html>. If the Viticulture Program indicates on such attestation form that he or she is a qualified alien, the Viticulture Program shall provide to the Department the U.S. Citizenship and Immigration Service documentation required to verify the Viticulture Program's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program. The Viticulture Program understands and agrees that lawful presence in the United States is required and the Viticulture Program may be disqualified or the Agreement immediately terminated, if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

6. Early State Agreement Termination or Certification Regarding Debarment: The Viticulture Program certifies that NWGGA is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from participating in transactions (debarred). The Viticulture Program further certifies that NWGGA has not had an agreement with the State of Nebraska terminated early by the State of Nebraska. If the Viticulture Program has had an agreement terminated early by the State of Nebraska, NWGGA shall provide the agreement number, along with an explanation of why the agreement was terminated early. The Viticulture Program also agrees to include the requirements of this paragraph in any and all subcontracts into which it enters. The Viticulture Program shall immediately notify the Department if, during the term of this Agreement, the Viticulture Program becomes debarred or has an agreement with the State of Nebraska terminated early. The Department may immediately terminate this Agreement by providing the Viticulture Program written notice if the Viticulture Program becomes debarred or if NWGGA has an agreement terminated early by the State of Nebraska during the term of this Agreement.

IN WITNESS WHEREOF, the parties executed this Agreement.

DEPARTMENT OF AGRICULTURE

\_\_\_\_\_  
Date

\_\_\_\_\_  
Greg Ibach, Director

BOARD OF REGENTS OF THE UNIVERSITY OF  
NEBRASKA

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jeanne Wicks, Director  
Sponsored Programs

**AGREEMENT**  
**BETWEEN THE**  
**NEBRASKA DEPARTMENT OF AGRICULTURE**  
**AND THE**  
**NEBRASKA WINERY AND GRAPE GROWERS ASSOCIATION**  
**#18-13-228**

This Agreement is entered into by and between the Nebraska Department of Agriculture, (hereafter “Department”) and the Nebraska Winery and Grape Growers Association, (hereafter “NWGGA”).

**PURPOSE:** The purpose of this Agreement is to provide funding, as authorized by the Nebraska Grape and Winery Board, to NWGGA to continue in the development of a statewide Wine Quality Assurance Program that will assist in the betterment of Nebraska’s grape and wine industry.

**AUTHORITY:** This Agreement is being entered into pursuant to the Nebraska Grape and Winery Board statutes, Neb. Rev. Stat. §53-301 to 53-305 which provides the Winery and Grape Producers Promotional Fund to be used by the Department at the direction of, and in cooperation with, the Board to develop programs that promote the wine industry in Nebraska.

The Nebraska Grape and Winery Board has conducted a public board meeting and directed the Department to provide funds to NWGGA.

THEREFORE, in consideration of the covenants herein contained, it is agreed by and between the parties hereto as follows:

C. DESCRIPTION OF WORK

1. NWGGA agrees to:
  - a. Utilize up to seven thousand six hundred dollars (\$7,600) to pay for activities that will continue in the development of a statewide Wine Quality Assurance Program. The activities will be multi-faceted, administered by a consultant, and developed in consultation with NWGGA member wineries.
  - b. NWGGA will work with an enologist from Colorado State University who will serve as the project consultant.
  - c. The purpose of this project is to help wineries and winemakers identify the sensory perceptions of their wines being sold, using a two-panel system that identifies both attributes and faults along a consumer-oriented scale.

In addition, a chemical panel will be run on each wine on an OenoFoss analyzer at a Colorado State University laboratory.

- d. The consultant will perform the following:
  - a. A chemical evaluation of wines to determine the stability of wines in production. Chemical test will be run to identify acidity, bacteria, glucose, fructose, and other ingredients that are included in bottled wines: and
  - b. A sensory consumer evaluation of the same wines after they have been bottled.
- e. The goal is to ascertain if testing wine quality both before and after bottling will result in greater quality integrity of wines and greater acceptance of consumer sensory parameters.
- f. Provide a written final report to the Department by July 15, 2017. The report, which shall describe the results of the project and the use of funds, will be made public by the Nebraska Grape and Winery Board.
- g. Provide services from July 1, 2016, through June 30, 2017.

#### B. ALLOWABLE COSTS and PAYMENTS

- 1. The Department shall provide a sum of up to seven thousand six hundred dollars (\$7,600) from the Winery and Grape Producers Promotional Fund to NWGGA upon both parties signing this Agreement and NWGGA incurring an obligation;
- 2. Final NWGGA billing shall be received no later than July 15, 2017;
- 3. The source of funding for this Agreement is the Winery and Grape Producers Promotional Fund. Payment is contingent upon funding availability;
- 4. NWGGA specifically agrees that funds provided under this Agreement shall be used only for the project and purpose enumerated herein; and
- 5. Any funds paid to NWGGA under this Agreement and not fully utilized and earned pursuant to this Agreement during the Agreement period shall be returned to the Department.

#### C. AGREEMENT PERIOD

The term of this Agreement is from **July 1, 2016, to July 15, 2017**, unless sooner terminated or completed as provided for in Section D.

## D. AGREEMENT PROVISIONS

### 1. Termination:

- 1) The Department may immediately terminate this Agreement, in whole or in part, if NWGGA fails to perform its obligations under this Agreement in a timely and proper manner. The Department may, at its discretion, allow NWGGA to cure a failure or breach within the Department's specified period of time. Allowing NWGGA time to cure a failure or breach does not waive the Department's right to immediately terminate this Agreement for the same or different Agreement breach which may occur at a different time. In case of default of the NWGGA, the Department may contract from other sources and hold the NWGGA responsible for any excess cost occasioned thereby.
  - 2) This Agreement may be terminated, at any time, upon mutual written consent of the parties, or by either party, with or without cause, upon thirty (30) days written notice to the other party. In the event of termination, the Department shall be under no further obligation to the NWGGA, except that the Department agrees to pay the NWGGA for the cost of services satisfactorily provided up to the date of termination, subtracting any additional costs caused by the NWGGA's termination.
2. Project Completion: The project will be deemed to be complete when to the Department's satisfaction the NWGGA completely and fully performs as outlined in Section A, or when funding is no longer available, whichever occurs first.
  3. Complete Understanding: This Agreement incorporates the complete understanding of the parties. Any modification of the Agreement shall be in writing and executed by each party to be valid.
  4. Relationship of Parties: The relationship of the Department and the NWGGA under this Agreement shall be that of principal and independent contractor. It is understood by both the Department and the NWGGA that the NWGGA is not an employee of the Department and that the Department assumes no responsibility beyond those specifically stated in this Agreement.
  5. Assignable: This Agreement is not assignable without the express written approval of the Department.
  6. Governing Law: This Agreement shall be governed in all respects by the laws and statutes of the State of Nebraska. Any legal proceedings against the Department regarding this Agreement shall be brought in the State of Nebraska administrative or judicial forums as defined by Nebraska State law.
  7. Indemnification:

- a. General. The NWGGA, to the extent allowable by Nebraska State Law, agrees to defend, indemnify, hold, and save harmless the Department and its employees, volunteers, agents, and its appointed officials (hereafter “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 (hereafter “claim”), sustained or asserted against the Department, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the NWGGA, its employees, subcontractors, consultants, representatives, and agents, except to the extent such liability is attenuated by any action of the Department which directly and proximately contributed to any claim. The obligation to indemnify shall survive the expiration or termination of this Agreement;
  - b. Personnel. The NWGGA shall, to the extent allowable by Nebraska State Law, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker’s compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel provided by the NWGGA.
8. Authority to Enter Agreement: The NWGGA warrants the individual signing this Agreement has the legal power, right, and authority to enter into this Agreement and to bind NWGGA accordingly.
9. Attorney’s Fees: In the event of any litigation, appeal, or other legal action to enforce any provision of this Agreement, the NWGGA agrees to pay all expenses of such action, as permitted by law, including attorney's fees and costs, if the Department is the prevailing party.
10. Severability: If any term or condition of this Agreement 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 Agreement did not contain the particular provision held to be invalid.
11. Penalty for Breach: In the event that the NWGGA fails to perform any substantial obligation under this Agreement, the Department may withhold all monies due and payable to the NWGGA, without penalty, until such failure is cured or otherwise adjudicated.

#### E. RECORDS AND WORK PRODUCT PROVISIONS

1. Records Available: The books of account, files, and other records of the NWGGA which are applicable to this Agreement shall be made available in the State of Nebraska for inspection, review, copying, and audit by the Department

and its representatives to determine the proper application and use of all funds paid to and for the account or benefits of the NWGGA. All records involving transactions related to this Agreement are to be maintained for a period of five (5) years from the date the term of this Agreement begins. If any litigation or audit is begun, or a claim is instituted involving the Agreement, the NWGGA shall retain the records beyond the five (5) year period until litigation, audit findings, or claim has been fully resolved and the Department has agreed that such records do not need to be retained.

2. Auditing Standard: The Department, under Auditing Standard A-133, will utilize a risk-based approach to review federal and state contract dollars expended to subrecipients. This may include the NWGGA providing recent audit reports to evaluate prior audit experiences and audit findings; Department review of subrecipient control environment; the Department requiring additional oversight reports; and the NWGGA providing copies of invoices detailing how the Department funds were expended.

## F. COMPLIANCE PROVISIONS

1. Nondiscrimination:
  - a. The NWGGA, and any and all subcontractors, shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act, Neb. Rev. Stat. §§48-1101 to 48-1125, prohibits contractors of the State of Nebraska, and their subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensations, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin. The NWGGA guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of this Agreement. The NWGGA shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from this Agreement.
  - b. It is further understood and agreed, that if the NWGGA is in violation of this clause, it shall be immediately barred from receiving further funds, unless a satisfactory showing is made that discriminatory practices have terminated and that a recurrence of such act or action is unlikely.
2. ADA Compliance: All provisions under this Agreement are subject to the Americans with Disabilities Act.
3. Worker's Compensation: The NWGGA, and any and all subcontractors guarantee payment of compensation to injured workers according to the Nebraska Worker's Compensation Act which is valid for the life of the Agreement including any extensions of the Agreement.

4. Drug Free: The NWGGA, and any and all subcontractors shall have in force during the Agreement period, and available for inspection, a policy regarding a drug-free workplace. The policy shall contain: A statement notifying employees the unlawful manufacture, distribution, possession, or use of a controlled substance is prohibited; the specific actions that will be taken for violating the policy; and a requirement that each employee receive a copy of the policy.
5. Immigration Verification:
  - a. The NWGGA, and any and all subcontractors 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 electronics 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 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 newly hired employees.
  - b. If the NWGGA is an individual or sole proprietorship, the NWGGA shall complete the United States Citizenship Attestation Form available in the DAS website at <http://das.nebraska.gov/materiel/purchasing.html>. If the NWGGA indicates on such attestation form that he or she is a qualified alien, the NWGGA shall provide to the Department the U.S. Citizenship and Immigration Service documentation required to verify the NWGGA's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program. The NWGGA understands and agrees that lawful presence in the United states is required and NWGGA may be disqualified or the Agreement immediately terminated, if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.
6. Early State Agreement Termination or Certification Regarding Debarment: The NWGGA certifies that NWGGA is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from participating in transactions (debarred). The NWGGA further certifies that NWGGA has not had an agreement with the State of Nebraska terminated early by the State of Nebraska. If the NWGGA has had an agreement terminated early by the State of Nebraska, NWGGA shall provide the agreement number, along with an explanation of why the agreement was terminated early. The NWGGA also agrees to include the requirements of this paragraph in any and all subcontracts into which it enters. The NWGGA shall immediately notify the Department if, during the term of this Agreement, the NWGGA becomes debarred or has an agreement with the State of Nebraska terminated early. The Department may immediately terminate this Agreement by

providing the NWGGA written notice if the NWGGA becomes debarred or if NWGGA has an agreement terminated early by the State of Nebraska during the term of this Agreement.

IN WITNESS WHEREOF, the parties executed this Agreement.

DEPARTMENT OF AGRICULTURE

\_\_\_\_\_  
Date

\_\_\_\_\_  
Greg Ibach, Director

NEBRASKA WINERY AND GRAPE GROWERS ASSOCIATION

\_\_\_\_\_  
Date

\_\_\_\_\_  
Eric Nelson, President



**AGREEMENT**  
**BETWEEN THE**  
**NEBRASKA DEPARTMENT OF AGRICULTURE**  
**AND THE**  
**NEBRASKA WINERY AND GRAPE GROWERS ASSOCIATION**  
**#18-13-281**

This Agreement is entered into by and between the Nebraska Department of Agriculture, (hereafter “Department”) and the Nebraska Winery and Grape Growers Association, (hereafter “NWGGA”).

**PURPOSE:** The purpose of this Agreement is to provide funding, as authorized by the Nebraska Grape and Winery Board, to NWGGA for an Executive Director position to conduct marketing activities to assist in the betterment of Nebraska’s grape and wine industry.

**AUTHORITY:** This Agreement is being entered into pursuant to the Nebraska Grape and Winery Board statutes, Neb. Rev. Stat. §53-301 to 53-305 which provides the Winery and Grape Producers Promotional Fund to be used by the Department at the direction of, and in cooperation with, the Board to develop programs that promote the wine industry in Nebraska.

The Nebraska Grape and Winery Board has conducted a public board meeting and directed the Department to provide funds to NWGGA.

THEREFORE, in consideration of the covenants herein contained, it is agreed by and between the parties hereto as follows:

**D. DESCRIPTION OF WORK**

1. NWGGA agrees to the following:
  - d. Fund an Executive Director position, which is designed to increase the competitiveness and sustainability of Nebraska’s grape and wine industry. The funds will specifically be used to pay for the Executive Director’s salary, benefits, travel expenses, banking costs, office supplies, software, postage, business insurance, and meeting expenses. Funds will also be used to pay the expenses for the Executive Director to participate in the Nebraska LEAD Program.
  - e. Provide a written final report to the Department by July 15, 2017. The report, which shall describe the results of the project and the use of funds, will be made public by the Nebraska Grape and Winery Board.

f. Provide services from July 1, 2016, through June 30, 2017.

B. ALLOWABLE COSTS and PAYMENTS

1. The Department shall provide a sum of up to eighty-six thousand four hundred twenty dollars (\$86,420) from the Winery and Grape Producers Promotional Fund to NWGGA upon both parties signing this Agreement and NWGGA incurring an obligation;
2. Final NWGGA billing shall be received no later than July 15, 2017;
3. The source of funding for this Agreement is the Winery and Grape Producers Promotional Fund. Payment is contingent upon funding availability;
4. NWGGA specifically agrees that funds provided under this Agreement shall be used only for the project and purpose enumerated herein; and
5. Any funds paid to NWGGA under this Agreement and not fully utilized and earned pursuant to this Agreement during the Agreement period shall be returned to the Department.

C. AGREEMENT PERIOD

The term of this Agreement is from **July 1, 2016, to July 15, 2017**, unless sooner terminated or completed as provided for in Section D.

D. AGREEMENT PROVISIONS

1. Termination:

- 1) The Department may immediately terminate this Agreement, in whole or in part, if NWGGA fails to perform its obligations under this Agreement in a timely and proper manner. The Department may, at its discretion, allow NWGGA to cure a failure or breach within the Department's specified period of time. Allowing NWGGA time to cure a failure or breach does not waive the Department's right to immediately terminate this Agreement for the same or different Agreement breach which may occur at a different time. In case of default of the NWGGA, the Department may contract from other sources and hold the NWGGA responsible for any excess cost occasioned thereby.
- 2) This Agreement may be terminated, at any time, upon mutual written consent of the parties, or by either party, with or without cause, upon thirty (30) days written notice to the other party. In the event of termination, the Department shall be under no further obligation to the NWGGA, except that the Department agrees to pay the NWGGA for the cost of services satisfactorily provided up to the date of termination, subtracting any additional costs caused by the NWGGA's termination.

2. **Project Completion:** The project will be deemed to be complete when to the Department's satisfaction the NWGGA completely and fully performs as outlined in Section A, or when funding is no longer available, whichever occurs first.
3. **Complete Understanding:** This Agreement incorporates the complete understanding of the parties. Any modification of the Agreement shall be in writing and executed by each party to be valid.
4. **Relationship of Parties:** The relationship of the Department and the NWGGA under this Agreement shall be that of principal and independent contractor. It is understood by both the Department and the NWGGA that the NWGGA is not an employee of the Department and that the Department assumes no responsibility beyond those specifically stated in this Agreement.
5. **Assignable:** This Agreement is not assignable without the express written approval of the Department.
6. **Governing Law:** This Agreement shall be governed in all respects by the laws and statutes of the State of Nebraska. Any legal proceedings against the Department regarding this Agreement shall be brought in the State of Nebraska administrative or judicial forums as defined by Nebraska State law.
7. **Indemnification:**
  - a. **General.** The NWGGA, to the extent allowable by Nebraska State Law, agrees to defend, indemnify, hold, and save harmless the Department and its employees, volunteers, agents, and its appointed officials (hereafter "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 (hereafter "claim"), sustained or asserted against the Department, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the NWGGA, its employees, subcontractors, consultants, representatives, and agents, except to the extent such liability is attenuated by any action of the Department which directly and proximately contributed to any claim. The obligation to indemnify shall survive the expiration or termination of this Agreement;
  - b. **Personnel.** The NWGGA shall, to the extent allowable by Nebraska State Law, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel provided by the NWGGA.

8. Authority to Enter Agreement: The NWGGA warrants the individual signing this Agreement has the legal power, right, and authority to enter into this Agreement and to bind NWGGA accordingly.
9. Attorney's Fees: In the event of any litigation, appeal, or other legal action to enforce any provision of this Agreement, the NWGGA agrees to pay all expenses of such action, as permitted by law, including attorney's fees and costs, if the Department is the prevailing party.
10. Severability: If any term or condition of this Agreement 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 Agreement did not contain the particular provision held to be invalid.
11. Penalty for Breach: In the event that the NWGGA fails to perform any substantial obligation under this Agreement, the Department may withhold all monies due and payable to the NWGGA, without penalty, until such failure is cured or otherwise adjudicated.

#### E. RECORDS AND WORK PRODUCT PROVISIONS

1. Records Available: The books of account, files, and other records of the NWGGA which are applicable to this Agreement shall be made available in the State of Nebraska for inspection, review, copying, and audit by the Department and its representatives to determine the proper application and use of all funds paid to and for the account or benefits of the NWGGA. All records involving transactions related to this Agreement are to be maintained for a period of five (5) years from the date the term of this Agreement begins. If any litigation or audit is begun, or a claim is instituted involving the Agreement, the NWGGA shall retain the records beyond the five (5) year period until litigation, audit findings, or claim has been fully resolved and the Department has agreed that such records do not need to be retained.
2. Auditing Standard: The Department, under Auditing Standard A-133, will utilize a risk-based approach to review federal and state contract dollars expended to subrecipients. This may include the NWGGA providing recent audit reports to evaluate prior audit experiences and audit findings; Department review of subrecipient control environment; the Department requiring additional oversight reports; and the NWGGA providing copies of invoices detailing how the Department funds were expended.

#### F. COMPLIANCE PROVISIONS

1. Nondiscrimination:

- a. The NWGGA, and any and all subcontractors, shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act, Neb. Rev. Stat. §§48-1101 to 48-1125, prohibits contractors of the State of Nebraska, and their subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensations, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin. The NWGGA guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of this Agreement. The NWGGA shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from this Agreement.
  - b. It is further understood and agreed, that if the NWGGA is in violation of this clause, it shall be immediately barred from receiving further funds, unless a satisfactory showing is made that discriminatory practices have terminated and that a recurrence of such act or action is unlikely.
2. ADA Compliance: All provisions under this Agreement are subject to the Americans with Disabilities Act.
3. Worker's Compensation: The NWGGA, and any and all subcontractors guarantee payment of compensation to injured workers according to the Nebraska Worker's Compensation Act which is valid for the life of the Agreement including any extensions of the Agreement.
4. Drug Free: The NWGGA, and any and all subcontractors shall have in force during the Agreement period, and available for inspection, a policy regarding a drug-free workplace. The policy shall contain: A statement notifying employees the unlawful manufacture, distribution, possession, or use of a controlled substance is prohibited; the specific actions that will be taken for violating the policy; and a requirement that each employee receive a copy of the policy.
5. Immigration Verification:
  - a. The NWGGA, and any and all subcontractors 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 electronics 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 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 newly hired employees.

- b. If the NWGGA is an individual or sole proprietorship, the NWGGA shall complete the United States Citizenship Attestation Form available in the DAS website at <http://das.nebraska.gov/materiel/purchasing.html>. If the NWGGA indicates on such attestation form that he or she is a qualified alien, the NWGGA shall provide to the Department the U.S. Citizenship and Immigration Service documentation required to verify the NWGGA's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program. The NWGGA understands and agrees that lawful presence in the United states is required and NWGGA may be disqualified or the Agreement immediately terminated, if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.
6. Early State Agreement Termination or Certification Regarding Debarment: The NWGGA certifies that NWGGA is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from participating in transactions (debarred). The NWGGA further certifies that NWGGA has not had an agreement with the State of Nebraska terminated early by the State of Nebraska. If the NWGGA has had an agreement terminated early by the State of Nebraska, NWGGA shall provide the agreement number, along with an explanation of why the agreement was terminated early. The NWGGA also agrees to include the requirements of this paragraph in any and all subcontracts into which it enters. The NWGGA shall immediately notify the Department if, during the term of this Agreement, the NWGGA becomes debarred or has an agreement with the State of Nebraska terminated early. The Department may immediately terminate this Agreement by providing the NWGGA written notice if the NWGGA becomes debarred or if NWGGA has an agreement terminated early by the State of Nebraska during the term of this Agreement.

IN WITNESS WHEREOF, the parties executed this Agreement.

DEPARTMENT OF AGRICULTURE

\_\_\_\_\_  
Date

\_\_\_\_\_  
Greg Ibach, Director

NEBRASKA WINERY AND GRAPE GROWERS  
ASSOCIATION

\_\_\_\_\_  
Date

\_\_\_\_\_  
Eric Nelson, President

**AGREEMENT**  
**BETWEEN THE**  
**NEBRASKA DEPARTMENT OF AGRICULTURE**  
**AND THE**  
**NEBRASKA WINERY AND GRAPE GROWERS ASSOCIATION**  
**#18-13-282**

This Agreement is entered into by and between the Nebraska Department of Agriculture, (hereafter “Department”) and the Nebraska Winery and Grape Growers Association, (hereafter “NWGGA”).

**PURPOSE:** The purpose of this Agreement is to provide funding, as authorized by the Nebraska Grape and Winery Board, to NWGGA to implement a Comprehensive Marketing Program to increase the awareness, consumption, and preference for Nebraska specific wines.

**AUTHORITY:** This Agreement is being entered into pursuant to the Nebraska Grape and Winery Board statutes, Neb. Rev. Stat. §53-301 to 53-305 which provides the Winery and Grape Producers Promotional Fund to be used by the Department at the direction of, and in cooperation with, the Board to develop programs that promote the wine industry in Nebraska.

The Nebraska Grape and Winery Board has conducted a public board meeting and directed the Department to provide funds to NWGGA.

THEREFORE, in consideration of the covenants herein contained, it is agreed by and between the parties hereto as follows:

**E. DESCRIPTION OF WORK**

1. NWGGA agrees to:
  - a. Utilize grant funds to implement a Nebraska wine and grape industry Comprehensive Marketing Program that consists of multiple components. The marketing activities will include, but will not necessarily be limited to, the following:
    - i. Nebraska’s Wine Tour Passport Program. This program is designed to provide an incentive for tourists and consumers to visit a significant number of wineries and tasting rooms across the state. Funds will pay for the creation, printing, distribution, and promotion

of the Passports. It will also pay for Passport prizes and web updates. Grant funds will be used to reimburse NWGGA for Passport expenses of up to ten thousand dollars (\$10,000).

- ii. Promote the components of the Marketing Plan, which include costs associated with social media, marketing, advertising, wine festivals, and sponsorships. Efforts will be used to expand the identity of Nebraska's grape and wine industry. Grant funds will be reimbursed for these efforts of up to twenty-seven thousand three hundred eighty dollars (\$27,380).
- iii. Provide a written final report to the Department by July 15, 2017. The report, which shall describe the results of the project and the use of funds, will be made public by the Nebraska Grape and Winery Board.

b Provide services from July 1, 2016, through June 30, 2017.

#### B. ALLOWABLE COSTS and PAYMENTS

1. The Department shall provide a sum of up to thirty-seven thousand three hundred eighty dollars (\$37,380) from the Winery and Grape Producers Promotional Fund to NWGGA upon both parties signing this Agreement and NWGGA incurring an obligation;
2. Final NWGGA billing shall be received no later than July 15, 2017;
3. The source of funding for this Agreement is the Winery and Grape Producers Promotional Fund. Payment is contingent upon funding availability;
4. NWGGA specifically agrees that funds provided under this Agreement shall be used only for the project and purpose enumerated herein; and
5. Any funds paid to NWGGA under this Agreement and not fully utilized and earned pursuant to this Agreement during the Agreement period shall be returned to the Department.

#### C. AGREEMENT PERIOD

The term of this Agreement is from **July 1, 2016, to July 15, 2017**, unless sooner terminated or completed as provided for in Section D.

#### D. AGREEMENT PROVISIONS

##### 1. Termination:

- 1) The Department may immediately terminate this Agreement, in whole or in part, if NWGGA fails to perform its obligations under this Agreement in a



timely and proper manner. The Department may, at its discretion, allow NWGGA to cure a failure or breach within the Department's specified period of time. Allowing NWGGA time to cure a failure or breach does not waive the Department's right to immediately terminate this Agreement for the same or different Agreement breach which may occur at a different time. In case of default of the NWGGA, the Department may contract from other sources and hold the NWGGA responsible for any excess cost occasioned thereby.

- 2) This Agreement may be terminated, at any time, upon mutual written consent of the parties, or by either party, with or without cause, upon thirty (30) days written notice to the other party. In the event of termination, the Department shall be under no further obligation to the NWGGA, except that the Department agrees to pay the NWGGA for the cost of services satisfactorily provided up to the date of termination, subtracting any additional costs caused by the NWGGA's termination.
2. Project Completion: The project will be deemed to be complete when to the Department's satisfaction the NWGGA completely and fully performs as outlined in Section A, or when funding is no longer available, whichever occurs first.
  3. Complete Understanding: This Agreement incorporates the complete understanding of the parties. Any modification of the Agreement shall be in writing and executed by each party to be valid.
  4. Relationship of Parties: The relationship of the Department and the NWGGA under this Agreement shall be that of principal and independent contractor. It is understood by both the Department and the NWGGA that the NWGGA is not an employee of the Department and that the Department assumes no responsibility beyond those specifically stated in this Agreement.
  5. Assignable: This Agreement is not assignable without the express written approval of the Department.
  6. Governing Law: This Agreement shall be governed in all respects by the laws and statutes of the State of Nebraska. Any legal proceedings against the Department regarding this Agreement shall be brought in the State of Nebraska administrative or judicial forums as defined by Nebraska State law.
  7. Indemnification:
    - a. General. The NWGGA, to the extent allowable by Nebraska State Law, agrees to defend, indemnify, hold, and save harmless the Department and its employees, volunteers, agents, and its appointed officials (hereafter "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 (hereafter

“claim”), sustained or asserted against the Department, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the NWGGA, its employees, subcontractors, consultants, representatives, and agents, except to the extent such liability is attenuated by any action of the Department which directly and proximately contributed to any claim. The obligation to indemnify shall survive the expiration or termination of this Agreement;

- b. Personnel. The NWGGA shall, to the extent allowable by Nebraska State Law, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker’s compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel provided by the NWGGA.
8. Authority to Enter Agreement: The NWGGA warrants the individual signing this Agreement has the legal power, right, and authority to enter into this Agreement and to bind NWGGA accordingly.
  9. Attorney’s Fees: In the event of any litigation, appeal, or other legal action to enforce any provision of this Agreement, the NWGGA agrees to pay all expenses of such action, as permitted by law, including attorney's fees and costs, if the Department is the prevailing party.
  10. Severability: If any term or condition of this Agreement 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 Agreement did not contain the particular provision held to be invalid.
  11. Penalty for Breach: In the event that the NWGGA fails to perform any substantial obligation under this Agreement, the Department may withhold all monies due and payable to the NWGGA, without penalty, until such failure is cured or otherwise adjudicated.

#### E. RECORDS AND WORK PRODUCT PROVISIONS

1. Records Available: The books of account, files, and other records of the NWGGA which are applicable to this Agreement shall be made available in the State of Nebraska for inspection, review, copying, and audit by the Department and its representatives to determine the proper application and use of all funds paid to and for the account or benefits of the NWGGA. All records involving transactions related to this Agreement are to be maintained for a period of five (5) years from the date the term of this Agreement begins. If any litigation or audit is begun, or a claim is instituted involving the Agreement, the NWGGA shall retain the records beyond the five (5) year period until litigation, audit findings, or

claim has been fully resolved and the Department has agreed that such records do not need to be retained.

2. Auditing Standard: The Department, under Auditing Standard A-133, will utilize a risk-based approach to review federal and state contract dollars expended to subrecipients. This may include the NWGGA providing recent audit reports to evaluate prior audit experiences and audit findings; Department review of subrecipient control environment; the Department requiring additional oversight reports; and the NWGGA providing copies of invoices detailing how the Department funds were expended.

## F. COMPLIANCE PROVISIONS

1. Nondiscrimination:
  - a. The NWGGA, and any and all subcontractors, shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act, Neb. Rev. Stat. §§48-1101 to 48-1125, prohibits contractors of the State of Nebraska, and their subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensations, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin. The NWGGA guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of this Agreement. The NWGGA shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from this Agreement.
  - b. It is further understood and agreed, that if the NWGGA is in violation of this clause, it shall be immediately barred from receiving further funds, unless a satisfactory showing is made that discriminatory practices have terminated and that a recurrence of such act or action is unlikely.
2. ADA Compliance: All provisions under this Agreement are subject to the Americans with Disabilities Act.
3. Worker's Compensation: The NWGGA, and any and all subcontractors guarantee payment of compensation to injured workers according to the Nebraska Worker's Compensation Act which is valid for the life of the Agreement including any extensions of the Agreement.
4. Drug Free: The NWGGA, and any and all subcontractors shall have in force during the Agreement period, and available for inspection, a policy regarding a drug-free workplace. The policy shall contain: A statement notifying employees the unlawful manufacture, distribution, possession, or use of a controlled

substance is prohibited; the specific actions that will be taken for violating the policy; and a requirement that each employee receive a copy of the policy.

5. Immigration Verification:
  - a. The NWGGA, and any and all subcontractors 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 electronics 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 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 newly hired employees.
  - b. If the NWGGA is an individual or sole proprietorship, the NWGGA shall complete the United States Citizenship Attestation Form available in the DAS website at <http://das.nebraska.gov/materiel/purchasing.html>. If the NWGGA indicates on such attestation form that he or she is a qualified alien, the NWGGA shall provide to the Department the U.S. Citizenship and Immigration Service documentation required to verify the NWGGA's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program. The NWGGA understands and agrees that lawful presence in the United states is required and NWGGA may be disqualified or the Agreement immediately terminated, if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.
6. Early State Agreement Termination or Certification Regarding Debarment: The NWGGA certifies that NWGGA is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from participating in transactions (debarred). The NWGGA further certifies that NWGGA has not had an agreement with the State of Nebraska terminated early by the State of Nebraska. If the NWGGA has had an agreement terminated early by the State of Nebraska, NWGGA shall provide the agreement number, along with an explanation of why the agreement was terminated early. The NWGGA also agrees to include the requirements of this paragraph in any and all subcontracts into which it enters. The NWGGA shall immediately notify the Department if, during the term of this Agreement, the NWGGA becomes debarred or has an agreement with the State of Nebraska terminated early. The Department may immediately terminate this Agreement by providing the NWGGA written notice if the NWGGA becomes debarred or if NWGGA has an agreement terminated early by the State of Nebraska during the term of this Agreement.

IN WITNESS WHEREOF, the parties executed this Agreement.

DEPARTMENT OF AGRICULTURE

\_\_\_\_\_  
Date

\_\_\_\_\_  
Greg Ibach, Director

NEBRASKA WINERY AND GRAPE GROWERS  
ASSOCIATION

\_\_\_\_\_  
Date

\_\_\_\_\_  
Eric Nelson, President

**AGREEMENT**  
**BETWEEN THE**  
**NEBRASKA DEPARTMENT OF AGRICULTURE**  
**AND THE**  
**NEBRASKA WINERY AND GRAPE GROWERS ASSOCIATION**  
**#18-13-283**

This Agreement is entered into by and between the Nebraska Department of Agriculture, (hereafter “Department”) and the Nebraska Winery and Grape Growers Association, (hereafter “NWGGA”).

**PURPOSE:** The purpose of this Agreement is to provide funding, as authorized by the Nebraska Grape and Winery Board, to NWGGA to pay for their membership in Wine America’s State Regional Associations Advisory Council. Funds will also be used to pay for expenses associated with the Executive Director to attend the 2016 Wine America Fall Membership Conference and the 2017 National Wine and Grape Policy Conference.

**AUTHORITY:** This Agreement is being entered into pursuant to the Nebraska Grape and Winery Board statutes, Neb. Rev. Stat. §53-301 to 53-305 which provides the Winery and Grape Producers Promotional Fund to be used by the Department at the direction of, and in cooperation with, the Board to develop programs that promote the wine industry in Nebraska.

The Nebraska Grape and Winery Board has conducted a public board meeting and directed the Department to provide funds to NWGGA.

THEREFORE, in consideration of the covenants herein contained, it is agreed by and between the parties hereto as follows:

**F. DESCRIPTION OF WORK**

1. NWGGA agrees to utilize grant funds to offset the costs associated with the following:
  - a. Wine America’s State Regional Associations Advisory Council membership dues for 2017.
  - b. Executive Director’s registration and travel expenses to attend the 2016 Wine America Fall Membership Conference. Wine America represents wineries in 43 states and leads a coalition of state and regional wine and grape associations. Wine America encourages the dynamic growth and development of American wineries and winegrowing through the advancement and advocacy of sound public policy.

- c. Executive Director's registration and travel expenses to attend the 2017 National Wine and Grape Policy Conference. This conference allows for wine industry leaders from around the country meet to weigh in on the most pressing public policy issues affecting growers and wineries. Wine growing from grape to glass is heavily regulated and this conference features speakers, presentations, and insights on the policies affecting the industry.
2. NWGGA will provide a written final report to the Department by July 15, 2017. The report, which shall describe the results of the project and the use of funds, will be made public by the Nebraska Grape and Winery Board.
3. NWGGA will provide services from July 1, 2016, through June 30, 2017.

#### B. ALLOWABLE COSTS and PAYMENTS

1. The Department shall provide a sum of up to two thousand six hundred dollars (\$2,600) from the Winery and Grape Producers Promotional Fund to NWGGA upon both parties signing this Agreement and NWGGA incurring an obligation;
2. Final NWGGA billing shall be received no later than July 15, 2017;
3. The source of funding for this Agreement is the Winery and Grape Producers Promotional Fund. Payment is contingent upon funding availability;
4. NWGGA specifically agrees that funds provided under this Agreement shall be used only for the project and purpose enumerated herein; and
5. Any funds paid to NWGGA under this Agreement and not fully utilized and earned pursuant to this Agreement during the Agreement period shall be returned to the Department.

#### C. AGREEMENT PERIOD

The term of this Agreement is from **July 1, 2016, to July 15, 2017**, unless sooner terminated or completed as provided for in Section D.

#### D. AGREEMENT PROVISIONS

1. Termination:
  - 1) The Department may immediately terminate this Agreement, in whole or in part, if NWGGA fails to perform its obligations under this Agreement in a timely and proper manner. The Department may, at its discretion, allow NWGGA to cure a failure or breach within the Department's specified period of time. Allowing NWGGA time to cure a failure or breach does not waive the Department's right to immediately terminate this Agreement for the same or different Agreement breach which may occur at a different

time. In case of default of the NWGGA, the Department may contract from other sources and hold the NWGGA responsible for any excess cost occasioned thereby.

- 2) This Agreement may be terminated, at any time, upon mutual written consent of the parties, or by either party, with or without cause, upon thirty (30) days written notice to the other party. In the event of termination, the Department shall be under no further obligation to the NWGGA, except that the Department agrees to pay the NWGGA for the cost of services satisfactorily provided up to the date of termination, subtracting any additional costs caused by the NWGGA's termination.
2. Project Completion: The project will be deemed to be complete when to the Department's satisfaction the NWGGA completely and fully performs as outlined in Section A, or when funding is no longer available, whichever occurs first.
3. Complete Understanding: This Agreement incorporates the complete understanding of the parties. Any modification of the Agreement shall be in writing and executed by each party to be valid.
4. Relationship of Parties: The relationship of the Department and the NWGGA under this Agreement shall be that of principal and independent contractor. It is understood by both the Department and the NWGGA that the NWGGA is not an employee of the Department and that the Department assumes no responsibility beyond those specifically stated in this Agreement.
5. Assignable: This Agreement is not assignable without the express written approval of the Department.
6. Governing Law: This Agreement shall be governed in all respects by the laws and statutes of the State of Nebraska. Any legal proceedings against the Department regarding this Agreement shall be brought in the State of Nebraska administrative or judicial forums as defined by Nebraska State law.
7. Indemnification:
  - a. General. The NWGGA, to the extent allowable by Nebraska State Law, agrees to defend, indemnify, hold, and save harmless the Department and its employees, volunteers, agents, and its appointed officials (hereafter "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 (hereafter "claim"), sustained or asserted against the Department, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the NWGGA, its employees, subcontractors, consultants, representatives, and agents, except to the extent such liability is



attenuated by any action of the Department which directly and proximately contributed to any claim. The obligation to indemnify shall survive the expiration or termination of this Agreement;

- b. Personnel. The NWGGA shall, to the extent allowable by Nebraska State Law, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel provided by the NWGGA.
8. Authority to Enter Agreement: The NWGGA warrants the individual signing this Agreement has the legal power, right, and authority to enter into this Agreement and to bind NWGGA accordingly.
9. Attorney's Fees: In the event of any litigation, appeal, or other legal action to enforce any provision of this Agreement, the NWGGA agrees to pay all expenses of such action, as permitted by law, including attorney's fees and costs, if the Department is the prevailing party.
10. Severability: If any term or condition of this Agreement 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 Agreement did not contain the particular provision held to be invalid.
11. Penalty for Breach: In the event that the NWGGA fails to perform any substantial obligation under this Agreement, the Department may withhold all monies due and payable to the NWGGA, without penalty, until such failure is cured or otherwise adjudicated.

#### E. RECORDS AND WORK PRODUCT PROVISIONS

1. Records Available: The books of account, files, and other records of the NWGGA which are applicable to this Agreement shall be made available in the State of Nebraska for inspection, review, copying, and audit by the Department and its representatives to determine the proper application and use of all funds paid to and for the account or benefits of the NWGGA. All records involving transactions related to this Agreement are to be maintained for a period of five (5) years from the date the term of this Agreement begins. If any litigation or audit is begun, or a claim is instituted involving the Agreement, the NWGGA shall retain the records beyond the five (5) year period until litigation, audit findings, or claim has been fully resolved and the Department has agreed that such records do not need to be retained.
2. Auditing Standard: The Department, under Auditing Standard A-133, will utilize a risk-based approach to review federal and state contract dollars expended to

subrecipients. This may include the NWGGA providing recent audit reports to evaluate prior audit experiences and audit findings; Department review of subrecipient control environment; the Department requiring additional oversight reports; and the NWGGA providing copies of invoices detailing how the Department funds were expended.

## F. COMPLIANCE PROVISIONS

1. Nondiscrimination:
  - a. The NWGGA, and any and all subcontractors, shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act, Neb. Rev. Stat. §§48-1101 to 48-1125, prohibits contractors of the State of Nebraska, and their subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensations, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin. The NWGGA guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of this Agreement. The NWGGA shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from this Agreement.
  - b. It is further understood and agreed, that if the NWGGA is in violation of this clause, it shall be immediately barred from receiving further funds, unless a satisfactory showing is made that discriminatory practices have terminated and that a recurrence of such act or action is unlikely.
2. ADA Compliance: All provisions under this Agreement are subject to the Americans with Disabilities Act.
3. Worker's Compensation: The NWGGA, and any and all subcontractors guarantee payment of compensation to injured workers according to the Nebraska Worker's Compensation Act which is valid for the life of the Agreement including any extensions of the Agreement.
4. Drug Free: The NWGGA, and any and all subcontractors shall have in force during the Agreement period, and available for inspection, a policy regarding a drug-free workplace. The policy shall contain: A statement notifying employees the unlawful manufacture, distribution, possession, or use of a controlled substance is prohibited; the specific actions that will be taken for violating the policy; and a requirement that each employee receive a copy of the policy.
5. Immigration Verification:

- a. The NWGGA, and any and all subcontractors 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 electronics 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 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 newly hired employees.
  - b. If the NWGGA is an individual or sole proprietorship, the NWGGA shall complete the United States Citizenship Attestation Form available in the DAS website at <http://das.nebraska.gov/materiel/purchasing.html>. If the NWGGA indicates on such attestation form that he or she is a qualified alien, the NWGGA shall provide to the Department the U.S. Citizenship and Immigration Service documentation required to verify the NWGGA's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program. The NWGGA understands and agrees that lawful presence in the United states is required and NWGGA may be disqualified or the Agreement immediately terminated, if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.
6. Early State Agreement Termination or Certification Regarding Debarment: The NWGGA certifies that NWGGA is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from participating in transactions (debarred). The NWGGA further certifies that NWGGA has not had an agreement with the State of Nebraska terminated early by the State of Nebraska. If the NWGGA has had an agreement terminated early by the State of Nebraska, NWGGA shall provide the agreement number, along with an explanation of why the agreement was terminated early. The NWGGA also agrees to include the requirements of this paragraph in any and all subcontracts into which it enters. The NWGGA shall immediately notify the Department if, during the term of this Agreement, the NWGGA becomes debarred or has an agreement with the State of Nebraska terminated early. The Department may immediately terminate this Agreement by providing the NWGGA written notice if the NWGGA becomes debarred or if NWGGA has an agreement terminated early by the State of Nebraska during the term of this Agreement.

IN WITNESS WHEREOF, the parties executed this Agreement.

DEPARTMENT OF AGRICULTURE

\_\_\_\_\_  
Date

\_\_\_\_\_  
Greg Ibach, Director

NEBRASKA WINERY AND GRAPE GROWERS  
ASSOCIATION

\_\_\_\_\_  
Date

\_\_\_\_\_  
Eric Nelson, President

**AGREEMENT**  
**BETWEEN THE**  
**NEBRASKA DEPARTMENT OF AGRICULTURE**  
**AND THE**  
**NEBRASKA WINERY AND GRAPE GROWERS ASSOCIATION**  
**#18-13-304**

This Agreement is entered into by and between the Nebraska Department of Agriculture, (hereinafter "Department") and the Nebraska Winery and Grape Growers Association, (hereinafter "NWGGA").

**PURPOSE:** The purpose of this Agreement is to provide funding, as authorized by the Nebraska Grape and Winery Board, to the NWGGA to host an Educational Conference Planning Meeting. The intent of the meeting is to determine the program, schedule and detailed events of the 2018 NWGGA Educational Conference.

**AUTHORITY:** This Agreement is being entered into pursuant to the Nebraska Grape and Winery Board Act, Neb. Rev. Stat. §§53-301 to 53-305 (hereinafter "Act") which provides the Winery and Grape Producers Promotional Fund to be used by the Department at the direction of, and in cooperation with, the Board to develop programs that promote the wine industry in Nebraska.

The Nebraska Grape and Winery Board has conducted a public board meeting and directed the Department to provide funds to NWGGA.

THEREFORE, in consideration of the covenants herein contained, it is agreed by and between the parties hereto as follows:

G. DESCRIPTION OF WORK

1. NWGGA agrees to:
  - d. Utilize grant funds to host an Educational Conference Planning Meeting.
  - e. The intent of the meeting is to determine the schedule, programming, and overall event details associated with hosting the conference.
  - f. Funds will be used to pay for committee member travel expenses and facility costs associated with the meeting.
  - g. Provide a written final report to the Department by July 15, 2017. The report, which shall describe the results of the project and the use of funds, will be made public by the Nebraska Grape and Winery Board.
  - h. Provide services from July 1, 2016, through June 30, 2017.

2. The Department agrees to:
  - a. Provide the funds for the activities in Paragraph A. of this Agreement from the Winery and Grape Producers Promotional Fund.

**B. ALLOWABLE COSTS and PAYMENTS**

1. The Department shall provide a sum of up to four thousand dollars (\$4,000) from the Winery and Grape Producers Promotional Fund to the NWGGA upon both parties signing this Agreement and NWGGA incurring an obligation.
2. Final NWGGA billing shall be received no later than July 15, 2017;
3. The source of funding for this Agreement is the Winery and Grape Producers Promotional Fund. Payment is contingent upon funding availability;
4. NWGGA specifically agrees that funds provided under this Agreement shall be used only for the project and purpose enumerated herein; and
5. Any funds paid to NWGGA, under this Agreement and not fully utilized and earned pursuant to this Agreement during the Agreement period, shall be returned to the Department.

**C. AGREEMENT PERIOD**

1. The term of this Agreement is from **July 1, 2016, to July 15, 2017**, unless sooner terminated or completed as provided for in Section D.

**D. AGREEMENT PROVISIONS**

1. **Termination:** This Agreement may be terminated, at any time, upon mutual written consent of the parties, or by either party, with or without cause, upon thirty (30) days written notice to the other party. In the event of termination, the Department shall be under no further obligation to NWGGA, except that the Department shall pay NWGGA for the cost of services provided up to the date of termination.
2. **Project Completion:** The project will be deemed to be complete when NWGGA provides all the information as outlined in Section A, or when funding is no longer available.
3. **Complete Understanding:** This Agreement incorporates the complete understanding of the parties. Any modification of the Agreement shall be in writing and executed by each party to be valid. In addition, this Agreement may also be amended in the future should additional work or additional funding become available within the terms of this Agreement.

4. Relationship of Parties: The relationship of the Department and NWGGA under this Agreement shall be that of principal and independent contractor. It is understood by both the Department and NWGGA that the NWGGA is not an employee of the Department and that the Department assumes no responsibility beyond those specifically stated in this Agreement.
5. Assignable: This Agreement is not assignable without the express written approval of the Department.
6. Governing Law: This Agreement shall be governed in all respects by the laws and statutes of the State of Nebraska. Any legal proceedings against the Department regarding this Agreement shall be brought in the State of Nebraska administrative or judicial forums as defined by State law.
7. Indemnification:
  - a. General. NWGGA, agrees to defend, indemnify, hold, and save harmless the Department and its employees, volunteers, agents, and its appointed officials, (hereinafter "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, (hereinafter "claim") sustained or asserted against the Department, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of NWGGA, its employees, subcontractors, consultants, representatives, and agents, except to the extent such liability is attenuated by any action of the Department which directly and proximately contributed to any claim. The obligation to indemnify shall survive the expiration or termination of this Agreement;
  - b. Personnel. NWGGA shall, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel provided by NWGGA.
8. Attorney's Fees: In the event of any litigation, appeal, or other legal action to enforce any provision of this Agreement, NWGGA agrees to pay all expenses of such action, as permitted by law, including attorney's fees and costs, if the Department is the prevailing party.
9. Severability: If any term or condition of this Agreement 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 Agreement did not contain the particular provision held to be invalid.

#### E. RECORDS AND WORK PRODUCT PROVISIONS

1. **Records Available:** The books of account, files, and other records of NWGGA which are applicable to this Agreement shall be available for inspection, review, and audit by the Department and its representatives to determine the proper application and use of all funds paid to and for the account or benefits of the NWGGA. All records involving transactions related to this Agreement are to be maintained for a period of five (5) years. If any litigation or audit is begun, or a claim is instituted involving the Agreement, NWGGA shall retain the records beyond the five (5) year period until litigation, audit findings, or claim has been fully resolved and the Department has agreed that such records do not need to be retained.
2. **Auditing Standard:** The Department, under Auditing Standard A-133, will utilize a risk-based approach to review federal and state contract dollars expended to subrecipients. This may include NWGGA providing recent audit reports to evaluate prior audit experiences and audit findings; Department review of subrecipient control environment; the Department requiring additional oversight reports; and NWGGA providing copies of invoices detailing how the Department funds were expended.
3. **Ownership of Data/Records:** All original materials, including final reports, or other records maintained by any party which are kept during, or derived out of, the work pursuant to this Agreement shall be the property of that party. Each party shall furnish to the other, upon request, a copy of information or data obtained and shall assist or advise, when appropriate, in an interpretation of such data.

#### F. COMPLIANCE PROVISIONS

1. **Nondiscrimination:** NWGGA, and subcontractors, if acquired, shall:
  - a. Not discriminate against recipients of services on the basis of race, color, religion, national origin, sex, disability, or age; and
  - b. Not discriminate against any employee or applicant for employment on the basis of race, color, religion, national origin, sex, or qualified disability.

It is further understood and agreed, that if NWGGA is in violation of this clause, it shall be barred forthwith from receiving further funds, unless a satisfactory showing is made that discriminatory practices have terminated and that a recurrence of such act or action is unlikely.



2. ADA Compliance: All provisions under this Agreement are subject to the Americans with Disabilities Act.
3. Worker's Compensation: NWGGA, and subcontractors, if acquired, guarantees payment of compensation to injured workers according to the Nebraska Worker's Compensation Act.
4. Drug Free: NWGGA, and subcontractors, if acquired, shall have in force during the Agreement period, and available for inspection, a policy regarding a drug-free workplace. The policy shall contain:
  - a. A statement notifying employees that the unlawful manufacture, distribution, possession, or use of a controlled substance is prohibited in NWGGA's workplace;
  - b. The specific actions that will be taken against employees for violating the policy; and
  - c. A requirement that each employee receive a copy of the policy.
5. Immigration Verification:
  - a. NWGGA, and subcontractors, if acquired, 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 electronics 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 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 newly hired employees.
  - b. If the NWGGA is an individual or sole proprietorship, the NWGGA shall complete the United States Citizenship Attestation Form available in the DAS website at <http://das.nebraska.gov/materiel/purchasing.html>. If the NWGGA indicates on such attestation form that he or she is a qualified alien, the NWGGA shall provide to the Department the U.S. Citizenship and Immigration Service documentation required to verify the NWGGA's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program. The NWGGA understands and agrees that lawful presence in the United states is required and NWGGA may be disqualified or the Agreement immediately terminated, if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.
6. Early State Agreement Termination or Certification Regarding Debarment: The NWGGA certifies that NWGGA is not presently debarred, suspended, proposed

for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from participating in transactions (debarred). The NWGGA further certifies that NWGGA has not had an agreement with the State of Nebraska terminated early by the State of Nebraska. If the NWGGA has had an agreement terminated early by the State of Nebraska, NWGGA shall provide the agreement number, along with an explanation of why the agreement was terminated early. The NWGGA also agrees to include the requirements of this paragraph in any and all subcontracts into which it enters. The NWGGA shall immediately notify the Department if, during the term of this Agreement, the NWGGA becomes debarred or has an agreement with the State of Nebraska terminated early. The Department may immediately terminate this Agreement by providing the NWGGA written notice if the NWGGA becomes debarred or if NWGGA has an agreement terminated early by the State of Nebraska during the term of this Agreement.

IN WITNESS WHEREOF, the parties executed this Agreement.

DEPARTMENT OF AGRICULTURE

\_\_\_\_\_  
Date

\_\_\_\_\_  
Greg Ibach, Director

NEBRASKA WINERY AND GRAPE GROWERS ASSOCIATION

\_\_\_\_\_  
Date

\_\_\_\_\_  
Eric Nelson President

**AGREEMENT**  
**BETWEEN THE**  
**NEBRASKA DEPARTMENT OF AGRICULTURE**  
**AND THE**  
**MAC'S CREEK WINERY AND VINEYARDS**  
**#18-13-358**

This Agreement is entered into by and between the Nebraska Department of Agriculture, (hereafter "Department") and Mac's Creek Winery and Vineyards (hereafter "Vineyard").

**PURPOSE:** The purpose of this Agreement is to provide funding from the Nebraska Grape and Winery Board to the Vineyard to conduct an ozone research project in an effort to assist in the betterment of Nebraska's grape and wine industry.

**AUTHORITY:** This Agreement is being entered into pursuant to the Nebraska Grape and Winery Board statutes, Neb. Rev. Stat. §53-301 to 53-305 which provides the Winery and Grape Producers Promotional Fund to be used by the Department at the direction of, and in cooperation with, the Board to develop research projects that increase the competitiveness of the wine industry in Nebraska.

The Nebraska Grape and Winery Board has conducted a public board meeting and directed the Department to provide funds to the Vineyard.

THEREFORE, in consideration of the covenants herein contained, it is agreed by and between the parties hereto as follows:

**H. DESCRIPTION OF WORK**

1. The Vineyard agrees to the following:
  - i. Investigate the feasibility of utilizing ozone technology to control viticulture diseases. Use of this technology would reduce or eliminate the application of chemicals to control such diseases thereby enhancing sustainability, reducing the carbon footprint, enhancing the positive image of Nebraska's grape and wine industry, and protecting the consumer.
  - j. Four cultivars will be selected for the study (Frontenac, Marechal Foch, Edelweiss and Brianna). Each cultivar will be divided into two groups.
    - i. The Control Group will receive water spray treatment kind.

- ii. Treatment Group #1 will receive ozone spray treatment.

Each group will be selected, by rows, in a block-style method. All vines will be managed in a manner consistent with normal growing season care for commercial vineyards prior to and during any treatment.

Specific research questions that will be addressed during this project will include:

- i. Is there a difference in disease control among groups when comparing the Control Group to Treatment Group #1 to Treatment Group #2 across all four cultivars?
- ii. Is there a difference in disease control among groups when comparing the Control Group to Treatment Group #1 within each cultivar?
- c. Up to five thousand nine hundred dollars (\$5,900) will pay for the costs associated with this project, which include equipment rental, data entry, statistical analysis, and a research coordinator. The research coordinator will perform data analysis, consultation, interpretation of data, and reporting of project results.
- d. Provide a written final report to the Department by July 15, 2017. The report, which shall describe the results of the project and the use of funds, will be made public by the Nebraska Grape and Winery Board.
- e. Provide services from July 1, 2016, through June 30, 2017.

#### B. ALLOWABLE COSTS and PAYMENTS

1. The Department shall provide a sum of up to five thousand nine hundred dollars (\$5,900) from the Winery and Grape Producers Promotional Fund to the Vineyard upon both parties signing this Agreement and the Vineyard incurring an obligation;
2. Final Vineyard billing shall be received no later than July 15, 2017;
3. The source of funding for this Agreement is the Winery and Grape Producers Promotional Fund. Payment is contingent upon funding availability;
4. The Vineyard specifically agrees that funds provided under this Agreement shall be used only for the project and purpose enumerated herein; and
5. Any funds paid to the Vineyard under this Agreement and not fully utilized and earned pursuant to this Agreement during the Agreement period shall be returned to the Department.

C. AGREEMENT PERIOD

The term of this Agreement is from **July 1, 2016, to July 15, 2017**, unless sooner terminated or completed as provided for in Section D.

D. AGREEMENT PROVISIONS

1. Termination:

- 1) The Department may immediately terminate this Agreement, in whole or in part, if the Vineyard fails to perform its obligations under this Agreement in a timely and proper manner. The Department may, at its discretion, allow the Vineyard to cure a failure or breach within the Department's specified period of time. Allowing the Vineyard time to cure a failure or breach does not waive the Department's right to immediately terminate this Agreement for the same or different Agreement breach which may occur at a different time. In case of default of the Vineyard, the Department may contract from other sources and hold the Vineyard responsible for any excess cost occasioned thereby.
  - 2) This Agreement may be terminated, at any time, upon mutual written consent of the parties, or by either party, with or without cause, upon thirty (30) days written notice to the other party. In the event of termination, the Department shall be under no further obligation to the Vineyard, except that the Department agrees to pay the Vineyard for the cost of services satisfactorily provided up to the date of termination, subtracting any additional costs caused by the Vineyard's termination.
2. Project Completion: The project will be deemed to be complete when to the Department's satisfaction the Vineyard completely and fully performs as outlined in Section A, or when funding is no longer available, whichever occurs first.
  3. Complete Understanding: This Agreement incorporates the complete understanding of the parties. Any modification of the Agreement shall be in writing and executed by each party to be valid.
  4. Relationship of Parties: The relationship of the Department and the Vineyard under this Agreement shall be that of principal and independent contractor. It is understood by both the Department and the Vineyard that the Vineyard is not an employee of the Department and that the Department assumes no responsibility beyond those specifically stated in this Agreement.
  5. Assignable: This Agreement is not assignable without the express written approval of the Department.
  6. Governing Law: This Agreement shall be governed in all respects by the laws and statutes of the State of Nebraska. Any legal proceedings against the

Department regarding this Agreement shall be brought in the State of Nebraska administrative or judicial forums as defined by Nebraska State law.

7. Indemnification:
  - a. General. The Vineyard, to the extent allowable by Nebraska State Law, agrees to defend, indemnify, hold, and save harmless the Department and its employees, volunteers, agents, and its appointed officials (hereafter “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 (hereafter “claim”), sustained or asserted against the Department, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the Vineyard, its employees, subcontractors, consultants, representatives, and agents, except to the extent such liability is attenuated by any action of the Department which directly and proximately contributed to any claim. The obligation to indemnify shall survive the expiration or termination of this Agreement;
  - b. Personnel. The Vineyard shall, to the extent allowable by Nebraska State Law, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker’s compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel provided by the Vineyard.
8. Authority to Enter Agreement: The Vineyard warrants the individual signing this Agreement has the legal power, right, and authority to enter into this Agreement and to bind the Vineyard accordingly.
9. Attorney’s Fees: In the event of any litigation, appeal, or other legal action to enforce any provision of this Agreement, the Vineyard agrees to pay all expenses of such action, as permitted by law, including attorney’s fees and costs, if the Department is the prevailing party.
10. Severability: If any term or condition of this Agreement 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 Agreement did not contain the particular provision held to be invalid.
11. Penalty for Breach: In the event that the Vineyard fails to perform any substantial obligation under this Agreement, the Department may withhold all monies due and payable to the Vineyard, without penalty, until such failure is cured or otherwise adjudicated.

## E. RECORDS AND WORK PRODUCT PROVISIONS

1. **Records Available:** The books of account, files, and other records of the Vineyard which are applicable to this Agreement shall be made available in the State of Nebraska for inspection, review, copying, and audit by the Department and its representatives to determine the proper application and use of all funds paid to and for the account or benefits of the Vineyard. All records involving transactions related to this Agreement are to be maintained for a period of five (5) years from the date the term of this Agreement begins. If any litigation or audit is begun, or a claim is instituted involving the Agreement, the Vineyard shall retain the records beyond the five (5) year period until litigation, audit findings, or claim has been fully resolved and the Department has agreed that such records do not need to be retained.
2. **Auditing Standard:** The Department, under Auditing Standard A-133, will utilize a risk-based approach to review federal and state contract dollars expended to subrecipients. This may include the Vineyard providing recent audit reports to evaluate prior audit experiences and audit findings; Department review of subrecipient control environment; the Department requiring additional oversight reports; and the Vineyard providing copies of invoices detailing how the Department funds were expended.

## F. COMPLIANCE PROVISIONS

1. **Nondiscrimination:**
  - a. The Vineyard, and any and all subcontractors, shall comply with all applicable local, state, and federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act, Neb. Rev. Stat. §§48-1101 to 48-1125, prohibits contractors of the State of Nebraska, and their subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions, compensations, or privileges of employment because of race, color, religion, sex, disability, marital status, or national origin. The Vineyard guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of this Agreement. The Vineyard shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from this Agreement.
  - b. It is further understood and agreed, that if the Vineyard is in violation of this clause, it shall be immediately barred from receiving further funds, unless a satisfactory showing is made that discriminatory practices have terminated and that a recurrence of such act or action is unlikely.
2. **ADA Compliance:** All provisions under this Agreement are subject to the Americans with Disabilities Act.

3. Worker's Compensation: The Vineyard, and any and all subcontractors guarantee payment of compensation to injured workers according to the Nebraska Worker's Compensation Act which is valid for the life of the Agreement including any extensions of the Agreement.
4. Drug Free: The Vineyard, and any and all subcontractors shall have in force during the Agreement period, and available for inspection, a policy regarding a drug-free workplace. The policy shall contain: A statement notifying employees the unlawful manufacture, distribution, possession, or use of a controlled substance is prohibited; the specific actions that will be taken for violating the policy; and a requirement that each employee receive a copy of the policy.
5. Immigration Verification:
  - a. The Vineyard, and any and all subcontractors 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 electronics 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 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 newly hired employees.
  - b. If the Vineyard is an individual or sole proprietorship, the Vineyard shall complete the United States Citizenship Attestation Form available in the DAS website at <http://das.nebraska.gov/materiel/purchasing.html>. If the Vineyard indicates on such attestation form that he or she is a qualified alien, the Vineyard shall provide to the Department the U.S. Citizenship and Immigration Service documentation required to verify the Vineyard's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program. The Vineyard understands and agrees that lawful presence in the United states is required and the Vineyard may be disqualified or the Agreement immediately terminated, if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.
6. Early State Agreement Termination or Certification Regarding Debarment: The Vineyard certifies that the Vineyard is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from participating in transactions (debarred). The Vineyard further certifies that it has not had an agreement with the State of Nebraska terminated early by the State of Nebraska. If the Vineyard has had an agreement terminated early by the State of Nebraska, it shall provide the agreement number, along with an explanation of why the agreement was



terminated early. The Vineyard also agrees to include the requirements of this paragraph in any and all subcontracts into which it enters. The Vineyard shall immediately notify the Department if, during the term of this Agreement, the Vineyard becomes debarred or has an agreement with the State of Nebraska terminated early. The Department may immediately terminate this Agreement by providing the Vineyard written notice if the Vineyard becomes debarred or if the Vineyard has an agreement terminated early by the State of Nebraska during the term of this Agreement.

IN WITNESS WHEREOF, the parties executed this Agreement.

DEPARTMENT OF AGRICULTURE

\_\_\_\_\_  
Date

\_\_\_\_\_  
Greg Ibach, Director

MAC'S CREEK WINERY AND VINEYARDS

\_\_\_\_\_  
Date

\_\_\_\_\_  
Seth McFarland, Owner/Vineyard Manager

# **AGREEMENT**

**between**

**NEBRASKA GRAPE AND WINERY BOARD**

**and**

**RUTH ANDERSON**

**#18-13-179**

This Agreement, entered into by and between the Nebraska Grape and Winery Board, hereinafter called the "Board," provides for funding from the Winery and Grape Producers' Promotional Fund to contract with Ruth Anderson, hereinafter called the "Independent Contractor," as the Nebraska Grape and Winery Board Services Contractor.

WHEREAS, the Nebraska Grape and Winery Board was created to:

1. Establish a public forum whereby any producer of wine, grapes, or other wine-producing agricultural products has the opportunity, at least once, annually, to discuss with the Board its policy and procedures;
2. Keep minutes of its meetings and other books and records which clearly reflect all of the acts and transactions of the Board and to make these records available for examination upon request by members of the public;
3. Authorize and approve the Nebraska Department of Agriculture's (NDA) expenditure of funds collected pursuant to §53-304;
4. Serve as an advisory panel to the Nebraska Liquor Control Commission in all matters pertaining to the wine industry; and
5. Adopt and promulgate rules and regulations to carry out §§53-301 to 53305 of the Nebraska Grape and Winery Board Statute.

WHEREAS, for administrative purposes, Board funds are located in NDA and defined as the Winery and Grape Producers' Promotional Fund;

WHEREAS, all revenue credited to this fund is used by NDA at the direction of and in cooperation with the Board to develop and maintain programs for the research and advancement of the growing, selling, marketing, and promotion of grapes, fruits, berries, honey, and other agricultural products

and their byproducts grown and produced in Nebraska for use in the wine industry; and

WHEREAS, the Nebraska Grape and Winery Board, under Neb. Rev. Stat. §§53301 to 53-305, has conducted a public board meeting and directed NDA to prepare a contract with an Independent Contractor to further enhance and maintain the clerical responsibilities of the Board.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed by and between the parties that the Board approves funds to hire an Independent Contractor to perform the work and adhere to the guidelines listed in this Agreement.

### **TERMS OF AGREEMENT**

Subject to the terms and conditions of this Agreement, the Board hereby engages the Independent Contractor to perform the services set forth herein, and the Independent Contractor hereby accepts such engagement.

The Agreement shall be in force and effective from July 1, 2016, to June 30, 2017, with one successive one-year option to renew. This shall include sufficient time to complete the schedule of the work proposed and complete additional tasks as identified by NDA and the Board. This Agreement will incorporate the complete understanding of the parties. Any modification of this Agreement will be in writing and executed by each party of the Agreement to be valid.

### **SCOPE OF WORK**

The Independent Contractor will work closely with NDA on many projects as they relate to the grape and wine industry. The Independent Contractor will be charged to provide the following services. These services shall be termed "work" herein.

1. Collect and forward all project proposals to Board members.
2. Periodically monitor progression of Board-funded grant projects.
3. Collect final reports and invoices from grant recipients.
4. Submit invoices and receipts to NDA in a timely manner.
5. Prepare year-end documentation that includes funded project proposals, contracts, and final reports.
6. Compile Board contact information, meeting minutes, grant application instructions, news releases, fiscal reports, grants, bylaws,

and Board statutes for assembly into the Grape and Winery Board's Annual Reports.

7. Write and compile Board meeting minutes, under direction of Board Secretary.
8. Ensure submission of Board Expense Reimbursement Requests to NDA.
9. Collaborate and communicate with NDA and the Board on a regular basis.
10. Schedule the location, dates, and times of all Board meetings and send this information to Nebraska print media outlets.
11. Coordinate and attend all Board meetings and some industry-related events.
12. Provide general administrative office support to NDA and the Board, as needed.

The Independent Contractor shall perform the work and accomplish such tasks as identified above. These will be designated as the responsibilities of the Independent Contractor. NDA and/or the Board may, from time to time, unilaterally increase or decrease the work to be performed. All of the provisions in this Agreement are intended to be complementary in nature, and any requirements mentioned by one and not mentioned in another section shall nevertheless be performed to the same extent as though required by all.

The Board acknowledges that the Independent Contractor's ability to carry out the work required is heavily dependent upon the Independent Contractor's past experience in the industry and in providing similar services to others.

## **INDEPENDENT CONTRACTOR RELATIONSHIP**

The relationship of the Independent Contractor and the Board, under this Agreement, shall be that of principal and Independent Contractor. It is understood by both parties that the Independent Contractor is not an employee of the Board, and the Board assumes no responsibility beyond those specifically stated in this Agreement.

The Independent Contractor agrees to perform the work herein solely as an Independent Contractor. The parties to this Agreement recognize that this Agreement does not create any actual or apparent agency, partnership, franchise, or relationship of employer and employee between the parties.

The Independent Contractor is not authorized to enter into or commit the Board to any agreements, and the Independent Contractor shall not represent itself as the agent or legal representative of the Board.

Furthermore, the Independent Contractor shall not be entitled to any remuneration, benefits, or expenses other than those specifically provided for in this Agreement. The Board shall not be liable for taxes, unemployment insurance, employers' liability, employer's FICA, social security, health benefits, vacation and sick leave benefits, profit sharing plans, withholding tax, or other taxes or withholdings for the Independent Contractor in performing the work under this Agreement. All such costs shall be the Independent Contractor's responsibility for the entire duration of the Independent Contractor's agreement with the Board.

## **WARRANTIES AND ASSURANCES**

The Independent Contractor represents and warrants the following.

1. Does not have any outstanding final judgments against it by the State, including tax liabilities, and agrees that any payments incurred by the State in this Agreement may be applied against such liabilities currently working or incurred in the future.
2. The work will be performed in accordance with, and shall not violate, applicable laws, rules or regulations, and standards prevailing in the industry.
3. The work will be original, clear, and presentable in a timely manner.
4. Possesses the skills in time management, oral and written communication, and literary proficiency, as it relates to writing, spelling, punctuation, and proofreading.
5. Access to a personal computer is readily accessible, which includes, at a minimum, a word processor and an Internet connection.
6. Able to provide independent transportation to all Board meetings and some industry-related events.
7. Equipped with the requisite training, skills, and experience necessary to perform the work described herein.

The Independent Contractor and the Board have the full power and authority to enter into and perform their obligations under this Agreement. This Agreement is a legal, valid, and binding obligation of the Independent Contractor, enforceable against it in accordance with its terms.

## **COMPENSATION PACKAGE**

In full consideration for the performance of the work hereunder, and for any rights granted or relinquished by the Independent Contractor under this Agreement, compensation shall be set at approximately ten (10) hours per week, with a total value not to exceed five thousand one hundred dollars (\$5,100) by June 30, 2016. After the Agreement begins, it is understood that, if additional costs should be incurred or the total yearly value needs to increase, with the mutual written consent of all parties tied to the Agreement and provided resources are available, the Agreement may be amended.

The compensation package for this position will be used to pay for work performed, office supplies, communication equipment, travel costs, and other incidental expenses directly associated with this position.

Payment in the amount of up to five thousand one hundred dollars (\$5,100) from the Winery and Grape Producers' Promotional Fund to the Independent Contractor will be payable, in full, by June 30, 2017, upon both parties signature to this Agreement and the Independent Contractor incurring an obligation. On a monthly basis, the Independent Contractor shall present invoices (not to exceed four hundred twenty-five dollars (\$425)) and progress reports outlining the Independent Contractor's activities to NDA from which payments shall be made. Funding for this position is subject to legislative appropriations and funding being available. Any unused funds shall be refunded to NDA and credited back to the Winery and Grape Producers' Promotional Fund, unless otherwise agreed. Furthermore, if the Independent Contractor fails to perform as outlined herein, the Independent Contractor shall be required to repay any unearned funds received under this Agreement.

## **INDEMNIFICATION**

The Independent Contractor shall defend, indemnify, hold harmless, and insure the Board from any and all claims and liabilities including costs and legal fees that may arise out of, or on account of, any failure on the part of the Independent Contractor to perform such duties for the Board, as herein specified. This obligation shall survive the expiration or termination of this Agreement.

## **RECORD KEEPING**

The books of account, files, and other records of the Independent Contractor, which are applicable to this Agreement, shall be available for inspection, review, and audit by NDA and the Board to determine the proper application and use of all funds paid to and for the account or benefit of the Independent Contractor.

The Independent Contractor agrees to maintain all books, documents, papers, or other records involving transactions related to this Agreement for a period of five (5) years. If any litigation or audit is begun or a claim is instituted involving the Agreement, the Independent Contractor shall retain the records beyond the five (5) year period until litigation, audit findings, or any claims have been fully resolved and the Board has agreed that such records no longer need to be retained.

The Independent Contractor specifically agrees that funds given to him or her shall be used only for the projects and purposes enumerated herein, and further acknowledges that expenditures shall not be used for political activity.

## **LEGAL COMPLIANCE**

The Independent Contractor shall not:

1. Discriminate against recipients of services on the basis of race, color, religion, national origin, sex, disability, or age; and
2. Discriminate against any employee or applicant for employment on the basis of race, color, religion, national origin, sex, age, or qualified disability.

It is further understood and agreed that, if the Independent Contractor is in violation of this clause, it shall be barred forthwith from receiving further funds, unless a satisfactory showing is made indicating discriminatory practices have terminated and a recurrence of such act or action is unlikely.

All provisions of this Agreement are subject to the Americans with Disabilities Act.

The Independent Contractor is required, and hereby agrees, to 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 1998, 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.

## **DRUG-FREE WORKPLACE POLICY**

The Independent Contractor agrees to have in force, during the Agreement period, and available for inspection, a policy regarding a drug-free workplace. The policy shall contain:

1. A statement notifying employees that the unlawful manufacture, distribution, possession, or use of a controlled substance is prohibited in the Independent Contractor's workplace;
2. The specific actions that will be taken against employees for violating the policy; and
3. A requirement that each employee shall receive a copy of the policy.

## **TERMINATION**

This Agreement may be terminated prior to the completion or achievement of the work by either of the parties hereto at any time by giving thirty (30) calendar days advance written notice to the other party. Any notices to either party, under this Agreement, shall be in writing and delivered by hand or sent by nationally recognized messenger service, or by registered or certified mail, postage prepaid with return receipt requested, to the address of NDA and the Board Chair.

Upon termination by either party, the Independent Contractor shall provide to NDA any and all copies, in whole or in part, of the work (as they exist) and any and all tangible materials the Board and/or NDA provided to the Independent Contractor in connection with this Agreement.

This Agreement is not assignable without the express written approval of the Board and becomes valid upon the date of the final signature.

Approved:

NEBRASKA GRAPE AND WINERY  
BOARD

\_\_\_\_\_  
Date

\_\_\_\_\_  
Max McFarland, Board Chairman

RUTH ANDERSON

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ruth Anderson, Independent Contractor



# STATUTES



NEBRASKA GRAPE AND WINERY BOARD

- Administration: These statutes create the Nebraska Grape and Winery Board. That Board is given certain duties under these statutes. For administrative purposes, a fund is located in the Nebraska Department of Agriculture. The money in this fund is to be used by the Nebraska Department of Agriculture at the direction of and in cooperation with the board to develop programs that promote the wine industry in Nebraska. See also section 53-123.15 and sections 2-5601 through 2-5605 for information about statutes that provide money for the fund.
- Adoption: The provisions of these statutes were last revised during the 2013 session of the Nebraska Legislature. This reproduction was prepared following that session.
- Rules: The Board is given authority to adopt and promulgate regulations, however, none have yet been developed.

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<u>Section</u>	<u>Subject</u>
53-301 .....	Nebraska Grape and Winery Board; created.
53-302 .....	Board; officers; terms; expenses.
53-303 .....	Board; powers and duties.
53-304 .....	Winery; payments required; Winery and Grape Producers Promotional Fund; created; use; investment.
53-305 .....	Board; annual report.

53-301. Nebraska Grape and Winery Board; created. (1) The Nebraska Grape and Winery Board is created. The board shall consist of five members to be appointed by the Governor on a nonpartisan basis. All board members shall be (a) citizens of Nebraska, (b) at least twentyone years of age, and (c) either engaged in or previously engaged in wine or grape production or research in this state. At least two board members shall be members of the Nebraska Winery and Grape Growers Association. In addition, the Director of Agriculture and the vice chancellor of the University of Nebraska Institute of Agriculture and Natural Resources or their designees shall be ex officio members of the board but shall have no vote in board matters.

(2) Whenever a vacancy occurs on the board for any reason, the Governor shall appoint an individual to fill such vacancy pursuant to the qualifications set forth in subsection (1) of this section.

53-302. Board; officers; terms; expenses. (1) Within thirty days after the appointment of the initial members of the Nebraska Grape and Winery Board, such board shall conduct its first regular meeting. During that meeting, the board members shall elect from among themselves, by majority vote, a chairperson, vice-chairperson, secretary, and treasurer, all to serve for terms of one year from the date of election. Subsequent board meetings shall take place at least once every six months and at such times as called by the chairperson or by any three board members.

(2) Each board member shall serve for a term of three years, upon completion of which he or she may, at the Governor's discretion, be reappointed.

(3) All voting board members shall be reimbursed for their actual and necessary expenses, as provided for in sections 81-1174 to 81-1177, while attending meetings of the board or while engaged in the performance of official responsibilities as determined by the board.

(4) A board member shall be removable by the Governor for cause. The board member shall first be given a written copy of the charges against him or her and also an opportunity to be heard publicly. In addition to all other causes, the failure of a board member to continue to meet any of the requirements for eligibility set out in section 53-301 shall be deemed sufficient cause for removal from office.

53-303. Board; powers and duties. The duties and responsibilities of the Nebraska Grape and Winery Board include, but are not limited to, the following:

(1) To establish a public forum whereby any producer of wine, grapes, or other wineproducing agricultural products has the opportunity, at least once annually, to discuss with the board its policy and procedures;

(2) To keep minutes of its meetings and other books and records which will clearly reflect all of the acts and transactions of the board and to make these records available for examination upon request by members of the public;

(3) To authorize and approve the Department of Agriculture's expenditure of funds collected pursuant to section 53-304;

(4) To serve as an advisory panel to the Nebraska Liquor Control Commission in all matters pertaining to the wine industry; and

(5) To adopt and promulgate rules and regulations to carry out sections 53301 to 53305.

53-304. Winery; payments required; Winery and Grape Producers Promotional Fund; created; use; investment. Each Nebraska winery shall pay to the Nebraska Liquor Control Commission twenty dollars for every one hundred sixty gallons of juice produced or received by its facility. Gifts, grants, or bequests may be received for the support of the Nebraska Grape and Winery Board. Funds paid pursuant to the charge imposed by this section and funds received pursuant to subsection (4) or (5) of section 53-123.15 and from gifts, grants, or bequests shall be remitted to the State Treasurer for credit to the Winery and Grape Producers Promotional Fund which is hereby created. For administrative purposes, the fund shall be located in the Department of Agriculture. All revenue credited to the fund pursuant to the charge imposed by this section and excise taxes collected pursuant to section 2-5603 and any funds received as gifts, grants, or bequests and credited to the fund shall be used by the department, at the direction of and in cooperation with the board, to develop and maintain programs for the research and advancement of the growing, selling, marketing, and promotion of grapes, fruits, berries, honey, and other agricultural products and their byproducts grown and produced in Nebraska for use in the wine industry. Such expenditures may include, but are not limited to, all necessary funding for the employment of experts in the fields of viticulture and enology, as deemed necessary by the board, and programs aimed at improving the promotion of all varieties of wines, grapes, fruits, berries, honey, and other agricultural products and their byproducts grown and produced in Nebraska for use in the wine industry.

Funds credited to the fund shall be used for no other purposes than those stated in this section and any transfers authorized pursuant to section 2-5604. Any funds not expended during a fiscal year may be maintained in the fund for distribution or expenditure during subsequent fiscal years. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

53-305. Board; annual report. The Nebraska Grape and Winery Board shall make and publish an annual report on or before January 1 of each year, which report shall set forth in detail the following:

(1) The name and address of each board member and a copy of all rules and regulations adopted and promulgated by the board; and

(2) A detailed explanation of all programs for which the board approved funding that fiscal year, pursuant to section 53-304, for the research, discovery, promotion, and development of programs for the growing, production, and marketing of Nebraska wines, grapes, fruits, berries, honey, and other agricultural products and their byproducts grown and produced in Nebraska for use in the wine industry.

Each annual report shall be presented to the Nebraska Liquor Control Commission within thirty days after its publication and made available also to any person who requests a copy. Except for the annual copy required by this section to be provided to the commission, the board may charge a nominal fee to cover the costs of printing and postage for making available copies of its annual reports.

## NEBRASKA GRAPE EXCISE TAX STATUTES

- Administration:** These statutes are administered by the Nebraska Department of Agriculture, Finance and Personnel Division. The Nebraska Department of Agriculture is located in the State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509, telephone: (402) 471-6817.
- Adoption:** The provisions of these statutes were initiated during the 2007 session of the Nebraska Legislature. This reproduction was prepared following that session.
- Rules:** The Department of Agriculture has no authority to adopt and promulgate regulations under these statutes.

### INDEX

<u>Section</u>	<u>Subject</u>
2-5601 .....	Terms, defined.
2-5602 .....	Excise tax; amount; payment.
2-5603 .....	Excise tax; first purchaser; deduction; records; contents; statement; remitted to State Treasurer.
2-5604 .....	Department of Agriculture; calculate costs; report.
2-5605 .....	Violation; penalty.

2-2601. Terms, defined. For purposes of sections 2-5601 to 2-5604:

(1) Commercial channels means the sale or delivery of grapes for any use, except grapes intended for ultimate consumption as table grapes, to any commercial buyer, dealer, processor, or cooperative or to any person, public or private, who resells any grapes or product produced from grapes;

(2) Delivered or delivery means receiving grapes for utilization or as a result of sale in the State of Nebraska but excludes receiving grapes for storage;

(3) First purchaser means any person, public or private corporation, association, partnership, or limited liability company buying, accepting for shipment, or otherwise acquiring the property in or to grapes from a grower;

(4) Grower means any landowner personally engaged in growing grapes, a tenant of the landowner personally engaged in growing grapes, and both the owner and tenant jointly and includes a person, a partnership, a limited liability company, an association, a corporation, a cooperative, a trust, or any other business unit, device, or arrangement; and

(5) Table grapes means grapes intended for ultimate consumption as produce in fresh, unprocessed form and not intended for wine production, juice production, or drying.

2-5602. Excise tax; amount; payment. (1) Except as provided in subsection (2) of this section, an excise tax of one cent per pound is levied upon all grapes sold through commercial channels in Nebraska or delivered in Nebraska. The excise tax shall be paid by the grower at the time of sale or delivery and shall be collected by the first purchaser. Grapes shall not be subject to the excise tax imposed by this section more than once.

(2) The excise tax imposed by this section shall not apply to the sale of grapes to the federal government for the ultimate use or consumption by the people of the United States when the State of Nebraska is prohibited from imposing such excise tax by the United States Constitution and the laws enacted pursuant thereto.

2-5603. Excise tax; first purchaser; deduction; records; contents; statement; remitted to State Treasurer. (1) The first purchaser, at the time of settlement, shall deduct the excise tax imposed by section 2-5602. The excise tax shall be deducted whether the grapes are stored in this state or any other state. The first purchaser shall maintain the necessary records of the excise tax for each purchase or delivery of grapes on the settlement form or check stub showing payment to the grower for each purchase or delivery. Such records maintained by the first purchaser shall provide the following information:

- (a) The name and address of the grower and seller;
- (b) The date of the purchase or delivery;
- (c) The number of pounds of grapes purchased; and
- (d) The amount of excise taxes collected on each purchase or delivery. Such records shall be open for inspection during normal business hours observed by the first purchaser.

(2) The first purchaser shall render and have on file with the Department of Agriculture by the last day of January and July of each year, on forms prescribed by the department, a statement of the number of pounds of grapes purchased in Nebraska. At the time the statement is filed, such first purchaser shall pay and remit to the department the excise tax imposed by section 2-5602.

(3) All excise taxes collected by the department pursuant to this section shall be remitted to the State Treasurer for credit to the Winery and Grape Producers'



Promotional Fund. The department shall remit the excise tax collected to the State Treasurer within ten days after receipt.

2-5604. Department of Agriculture; calculate costs; report. For each fiscal year beginning with FY2007-08, the Department of Agriculture shall calculate its costs in collecting and enforcing the excise tax imposed by section 2-5602 and shall report such costs to the Department of Administrative Services within thirty days after the end of the calendar quarter. Sufficient funds to cover such costs shall be transferred from the Winery and Grape Producers' Promotional Fund to the Management Services Expense Revolving Fund at the end of each calendar quarter. Funds shall be transferred upon the receipt by the Department of Administrative Services of a report of costs incurred by the Department of Agriculture for the previous calendar quarter.

2-5605. Violation; penalty. Any person violating sections 2-5601 to 2-5603 shall be guilty of a Class III misdemeanor.



# FARM WINERIES STATUTES

## INDEX

<u>Section</u>	<u>Subject</u>
53-123.10.....	Farm winery license; when issued.
53-123.11.....	Farm winery license; rights of licensee; removal of unsealed bottle of wine; conditions.
53-123.12.....	Farm winery license; application requirements; fees.
53-123.13.....	Farm winery; waiver of requirement; when; conditions.
53-123.15 .....	Shipping license; when required; rights of licensee; application; contents; violation; disciplinary action.

### **53-123.10 Farm winery license; when issued.**

A license to operate a farm winery may be issued by the commission upon an applicant's compliance with section 53-123.12 and such other requirements as the commission adopts and promulgates by rule and regulation to administer §§53-101.02 and 53-123.10 to 53-123.13.

Source: Laws 1985, LB 279, § 4.

### **53-123.11 Farm winery license; rights of licensee; removal of unsealed bottle of wine; conditions.**

- (1) A farm winery license shall entitle the holder to:
  - (a) Sell wines produced at the farm winery onsite at wholesale and retail and to sell wines produced at the farm winery at off-premises sites holding the appropriate retail license;
  - (b) Sell wines produced at the farm winery at retail for consumption on the premises;
  - (c) Permit a customer to remove one unsealed bottle of wine for consumption off the premises. The licensee or his or her agent shall (A) securely reseal such bottle and place the bottle in a bag designed so that it is visibly apparent that the resealed bottle of wine has not been opened or tampered with and (B) provide a dated receipt to the customer and attach to such bag a copy of the dated receipt for the resealed bottle of wine.

If the resealed bottle of wine is transported in a motor vehicle, it must be placed in the trunk of the motor vehicle or the area behind the last upright seat of such motor vehicle if the area is not normally occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk;

- (d) Ship wines produced at the farm winery by common carrier and sold at retail to recipients in and outside the State of Nebraska, if the output of such farm winery for each calendar year as reported to the commission by December 31 of each year does not exceed thirty thousand gallons. In the event such amount exceeds thirty thousand gallons, the farm winery shall be required to use a licensed wholesaler to distribute its wines for the following calendar year, except that this requirement shall not apply to wines produced and sold onsite at the farm winery pursuant to subdivision (1)(a) of this section;
  - (e) Allow sampling of the wine at the farm winery and at one branch outlet in the state in reasonable amounts;
  - (f) Sell wines produced at the farm winery to other Nebraska farm winery licensees, in bulk, bottled, labeled, or unlabeled, in accordance with 27 C.F.R. 24.308, 27 C.F.R. 24.309, and 27 C.F.R. 24.314, as such regulations existed on January 1, 2008; and
  - (g) Purchase distilled spirits from licensed microdistilleries in Nebraska, in bulk or bottled, made entirely from Nebraska-licensed farm winery wine to be used in the production of fortified wine at the purchasing licensed farm winery.
- (2) No farm winery shall manufacture wine in excess of fifty thousand gallons per year.
  - (3) A holder of a farm winery license may obtain a special designated license pursuant to section 53-124.11.
  - (4) A holder of a farm winery license may obtain an annual catering license pursuant to section 53-124.12.

Source: Laws 1985, LB 279, § 5; Laws 1991, LB 344, § 23; Laws 1997, LB 479, § 1; Laws 2003, LB 536, § 3; Laws 2006, LB 562, § 3; Laws 2008, LB1103, § 2. Effective date July 18, 2008.

**53-123.12 Farm winery license; application requirements; fees.**

Any person desiring to obtain a new license to operate a farm winery shall:

- (1) File an application with the commission in triplicate original upon such forms as the commission from time to time prescribes;
- (2) Pay the license fee to the commission under subdivision (2) of section 53124, which fee shall be returned to the applicant if the application is denied; and
- (3) Pay the state registration fee to the commission in the sum of forty-five dollars.

License fees and registration fees may be paid to the commission by certified or cashier's check of a bank within this state, personal or business check, United States post office money order, or cash in the full amount of such fees. The commission shall then notify, by registered or certified mail marked return receipt requested with postage prepaid, the municipal clerk of the city or incorporated village where such license is sought or, if the license is not sought within a city or incorporated village, the county clerk of the county where such license is sought of the receipt of the application and shall enclose with such notice one copy of the application. No such license shall then be issued by the commission until the expiration of at least forty-five days from the date of mailing such application by the commission. Within thirty-five days from the date of receipt of such application from the commission, the local governing bodies of nearby cities or villages or the county may make and submit to the commission recommendations relative to the granting of or refusal to grant such license to the applicant.

Source: Laws 1985, LB 279, § 7; Laws 1988, LB 1089, § 10; Laws 1991, LB 202, § 2; Laws 2000, LB 973, § 3.

**53-123.13 Farm winery; waiver of requirement; when; conditions.**

- (1) If the operator of a farm winery is unable to produce or purchase seventyfive percent of the grapes, fruit, or other suitable agricultural products used in the farm winery from within the state due to natural disaster which causes substantial loss to the Nebraska-grown crop, such operator may petition the commission to waive the seventy-five-percent requirement prescribed in subdivision (31) of section 53-103 for one year.
- (2) It shall be within the discretion of the commission to waive the seventyfivepercent requirement taking into consideration the availability of products used in farm wineries in this area and the ability of such operator to produce wine from products that are abundant within the state.
- (3) If the operator of a farm winery is granted a waiver, any product purchased as concentrated juice from grapes or other fruits from outside of Nebraska, when reconstituted from concentrate, may not

exceed in total volume along with other products purchased the total percentage allowed by the waiver.

- (4) Any product purchased under the waiver or as part of the twenty-five percent of allowable product purchased that is not Nebraska-grown for the production of wine shall not exceed the twenty-five percent volume allowed under state law if made from concentrated grapes or other fruit, when reconstituted. The concentrate shall not be reduced to less than twenty-two degrees Brix in accordance with 27 C.F.R. 24.180.

Source: Laws 1985, LB 279, § 6; Laws 1986, LB 871, § 2; Laws 1989, LB 441, § 5; Laws 1991, LB 344, § 24; Laws 1994, LB 859, § 5; Laws 2004, LB 485, § 13; Laws 2008, LB 1103, §3. Effective date July 18, 2008.

**53-123.15 Shipping license; when required; rights of licensee; application; contents; violation; disciplinary action.**

- (1) No person shall order or receive alcoholic liquor in this state which has been shipped directly to him or her from outside this state by any person other than a holder of a shipping license issued by the commission, except that a licensed wholesaler may receive not more than three gallons of wine in any calendar year from any person who is not a holder of a shipping license.
- (2) The commission may issue a shipping license to a manufacturer. Such license shall allow the licensee to ship alcoholic liquor only to a licensed wholesaler, except that a licensed wholesaler may, without a shipping license and for the purposes of subdivision (2) of section 53-161, receive beer in this state which has been shipped from outside the state by a manufacturer in accordance with the Nebraska Liquor Control Act to the wholesaler, then transported by the wholesaler to another state for retail distribution, and then returned by the retailer to such wholesaler. A person who receives a license pursuant to this subsection shall pay the fee required in sections 53-124 and 53-124.01 for a manufacturer's shipping license. Such fee shall be collected by the commission and be remitted to the State Treasurer for credit to the General Fund.
- (3) The commission may issue a shipping license to any person who deals with vintage wines, which shipping license shall allow the licensee to distribute such wines to a licensed wholesaler in the state. For purposes of distributing vintage wines, a licensed shipper must utilize a designated wholesaler if the manufacturer has a designated wholesaler. For purposes of this section, vintage wine shall mean a wine verified to be ten years of age or older and not available from a primary American

source of supply. A person who receives a license pursuant to this subsection shall pay the fee required in sections 53-124 and 53124.01 for a vintage wine dealer's shipping license. Such fee shall be collected by the commission and be remitted to the State Treasurer for credit to the General Fund.

- (4) The commission may issue a shipping license to any person manufacturer who sells and ships alcoholic liquor from another state directly to a consumer in this state if the manufacturer satisfies the requirements of subsections (7) through (9) of this section. A person manufacturer who receives a license pursuant to this subsection shall pay the fee required in sections 53-124 and 53-124.01 for a manufacture direct sales shipping license. Such fee shall be collected by the commission and remitted to the State Treasurer for credit to the Winery and Grape Producers Promotional Fund.
- (5) The commission may issue a shipping license to any retailer who is licensed within or outside Nebraska, who is authorized to sell alcoholic liquor at retail in the state of domicile of the retailer, and who is not a manufacturer if such retailer satisfies the requirements of subsections (7) through (9) of this section to ship alcoholic liquor from another state directly to a consumer in this state. A retailer who receives a license pursuant to this subsection shall pay the fee required in sections 53-124 and 53-124.01 for a retail direct sales shipping license. Such fee shall be collected by the commission and remitted to the State Treasurer for credit to the Winery and Grape Producers Promotional Fund.
- (6) The application for a shipping license under subsection (2) or (3) of this section shall be in such form as the commission prescribes. The application shall contain all provisions the commission deems proper and necessary to effectuate the purpose of any section of the act and the rules and regulations of the commission that apply to manufacturers and shall include, but not be limited to, provisions that the applicant, in consideration of the issuance of such shipping license, agrees:
  - (a) To comply with and be bound by section sections 53-162 and 53164.01 in making and filing reports, paying taxes, penalties, and interest, and keeping records;
  - (b) To permit and be subject to all of the powers granted by section 53164.01 to the commission or its duly authorized employees or agents for inspection and examination of the applicant's premises and records and to pay the actual expenses, excluding salary, reasonably attributable to such inspections and examinations made by duly authorized employees of the commission if within the United States; and

- (c) That if the applicant violates any of the provisions of the application or the license, any section of the act, or any of the rules and regulations of the commission that apply to manufacturers, the commission may revoke or suspend, cancel, or revoke such shipping license for such period of time as it may determine.
- (7) The application for a shipping license under subsection (4) or (5) of this section shall be in such form as the commission prescribes. The application shall require an applicant which is a manufacturer, a craft brewery, a craft distillery, or a farm winery to identify the brands of alcoholic liquor that the applicant is requesting the authority to ship either into or within Nebraska. For all applicants, unless otherwise provided in this section, the application shall contain all provisions the commission deems proper and necessary to effectuate the purpose of any section of the act and the rules and regulations of the commission that apply to manufacturers or retailers and shall include, but not be limited to, provisions that the applicant, in consideration of the issuance of such shipping license, agrees:
- (a) To comply with and be bound by sections 53-162 and 53-164.01 in making and filing reports, paying taxes, penalties, and interest, and keeping records;
  - (b) To permit and be subject to all of the powers granted by section 53164.01 to the commission or its duly authorized employees or agents for inspection and examination of the applicant's premises and records and to pay the actual expenses, excluding salary, reasonably attributable to such inspections and examinations made by duly authorized employees of the commission if within the United States;
  - (c) That if the applicant violates any of the provisions of the application or the license, any section of the act, or any of the rules and regulations of the commission that apply to manufacturers or retailers, the commission may suspend, cancel, or revoke such shipping license for such period of time as it may determine;
  - (d) That the applicant agrees to notify the commission of any violations in the state in which he or she is domiciled and any violations of the direct



shipping laws of any other states. Failure to notify the commission within thirty days after such a violation may result in a hearing before the commission pursuant to which the license may be suspended, canceled, or revoked; and

- (e) That the applicant, if a manufacturer, craft brewery, craft distillery, or farm winery, agrees to notify any wholesaler licensed in Nebraska that has been authorized to distribute such brands that the application has been filed for a shipping license. The notice shall be in writing and in a form prescribed by the commission. The commission may adopt and promulgate rules and regulations as it reasonably deems necessary to implement this subdivision, including rules and regulations that permit the holder of a shipping license under this subdivision to amend the shipping license by, among other things, adding or deleting any brands of alcoholic liquor identified in the shipping license.
- (8) Any manufacturer or retailer who is granted a shipping license under subsection (4) or (5) of this section shall:
- (a) Only ship the brands of alcoholic liquor identified on the application;
  - (b) Only ship alcoholic liquor that is owned by the holder of the shipping license;
  - (c) Only ship alcoholic liquor that is properly registered with the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury;
  - (d) Not ship any alcoholic liquor products that the manufacturers or wholesalers licensed in Nebraska have voluntarily agreed not to bring into Nebraska at the request of the commission;
  - (e) Not ship more than nine liters of alcoholic liquor per month to any person in Nebraska to whom alcoholic beverages may be lawfully sold. All such sales and shipments shall be for personal consumption only and not for resale; and
  - (f) Cause the direct shipment of alcoholic liquor to be by approved common carrier only. The commission shall adopt and promulgate rules and regulations pursuant to which common carriers may apply for approval to provide common carriage of alcoholic liquor shipped

by a holder of a shipping license issued pursuant to subsection (4) or (5) of this section. The rules and regulations shall include provisions that require (i) the recipient to demonstrate, upon delivery, that he or she is at least twentyone years of age, (ii) the recipient to sign an electronic or paper form or other acknowledgement of receipt as approved by the commission, and (iii) the commission-approved common carrier to submit to the commission such information as the commission may prescribe. The commission-approved common carrier shall refuse delivery when the proposed recipient appears to be under the age of twenty-one years and refuses to present valid identification. All holders of shipping licenses shipping alcoholic liquor pursuant to this subdivision shall affix a conspicuous notice in sixteen-point type or larger to the outside of each package of alcoholic liquor shipped within or into the State of Nebraska, in a conspicuous location, stating: **CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AT LEAST 21 YEARS OF AGE REQUIRED FOR DELIVERY.** Any delivery of alcoholic beverages to a minor by a common carrier shall constitute a violation by the common carrier. The common carrier and the holder of the shipping license shall be liable only for their independent acts.

- (9) For purposes of sections 53-160, 77-2703, and 77-27,142, each shipment of alcoholic liquor by the holder of a shipping license under subsection (3), (4), or (5) of this section shall constitute a sale in Nebraska by establishing a nexus in the state. The holder of the shipping license shall collect all the taxes due to the State of Nebraska and any political subdivision and remit any excise taxes monthly to the commission and any sales taxes to the Department of Revenue.
- (10) By July 1, 2014, the commission shall report to the General Affairs Committee of the Legislature the number of shipping licenses issued for license years 2013-14 and 2014-15. The report shall be made electronically.

Source: Laws 1991, LB 344, § 49; Laws 1994, LB 416, § 1; Laws 1995, LB 874, § 1; Laws 2001, LB 671, § 1; Laws 2004, LB 485, § 14; Laws 2007, LB 441, § 1; Laws 2010, LB 861, § 55; Laws 2010, LB 867, § 1; Laws LB 286, § 1; Laws 2013, LB 230, § 1.