

Nebraska Grape and Winery Board

Annual Report 2020

For information contact:

**Nebraska Department of Agriculture
301 Centennial Mall South
P.O. Box 94947
Lincoln, NE 68509
(402) 471-4876**

Table of Contents

<u>Contents</u>	<u>Page</u>
Board of Directors	
Nebraska Grape and Winery Board of Directors.....	5
Overview of Activities	
Executive Summary.....	9
Strategic Plan	13
Meeting Minutes	
Minutes, January 21, 2020.....	25
Minutes, June 25, 2020.....	30
2019 – 2020 Fiscal Report.....	37
Contracts	
UNL Viticulture Program.....	41
NWGGA Executive Management Services.....	49
NWGGA Marketing Program.....	56
NWGGA Industry Professional Development.....	63
NWGGA First Amendment/Toast Nebraska.....	70
NWGGA Toast Nebraska.....	72
NWGGA Educational Programs and Materials.....	79
Nebraska Grape and Winery Board – First Amendment/Board Services Contractor.....	86
Nebraska Grape and Winery Board – Board Services Contractor.....	88
Statutes	
Nebraska Grape and Winery Board.....	97
Nebraska Grape Excise Tax.....	101
Farm Wineries	104

**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

Michael Schilling (Vice-Chair)Winery/Vineyard Owner
1335 C Street
Pawnee City, NE 68420
(402) 852-2400
mike@schillingbridgewinery.com

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

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

Jim BallardVineyard Owner
1503 W. Raymond Road
Raymond, NE 68428
(402) 783-5255
javwines@windstream.net

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, 2019 and ended June 30, 2020. 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 (including some prior year expenses) totaled \$383,948; \$266,561.05 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 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, support Nebraska Winery and Grape Growers Association (NWGGA) activities, and work 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, 2019 – 2020 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

APPROVED
MAY 2017

TABLE OF CONTENTS

CONTENTS	PAGE
Introduction and Process	2
Structure	2
Mission	3
Board Goals	3
Monitor and Update the Plan	8
The Board's Commitment	8
Conclusion	9

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.

Strategies:

- 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

January 21, 2020	5:00 p.m.	Advanced Association Office
Meeting called by	Nebraska Grape and Winery Board	
Type of meeting	Board Meeting	
Facilitator	Max McFarland (Chairman)	
Note takers	Megan Benes	
Attendees	Max McFarland, Dave Hanna, Terry Ryan, Jim Ballard, Mike Schilling, Casey Foster, Patty Richard, Ashley Bonebright, Kathi Schildt, Whitney Parks, Mick McDowell, Karen Kollars, Ben Loseke, Steve Gamet, and Megan Benes	

Call to Order

Open Meetings Act	Public Notice was published in the <i>Beatrice Daily Sun (01/16/20)</i> , <i>Kearney Hub (01/16/20)</i> , <i>Grand Island (01/15/20)</i> , <i>Norfolk Daily (01/16/20)</i> , <i>North Platte (01/16/20)</i> .
--------------------------	---

Approval of Agenda

Discussion
 The meeting was called to order at 5:05 p.m. A motion was made to approve the meeting agenda.

Motion to Approve	Second	
Jim	Dave	
Roll Call Vote	For <input checked="" type="checkbox"/> Max <input checked="" type="checkbox"/> Dave <input checked="" type="checkbox"/> Terry <input checked="" type="checkbox"/> Mike <input checked="" type="checkbox"/> Jim	Against <input type="checkbox"/> Max <input type="checkbox"/> Dave <input type="checkbox"/> Terry <input type="checkbox"/> Mike <input type="checkbox"/> Jim

Approval of November 18, 2019 Meeting Minutes

Discussion
 A copy of the November 18, 2019 meeting minutes was handed out to all board members to review. Ashley Bonebright's name was missing from the attendee's list. Megan will update the minutes to include this edit. A motion was made to accept the minutes as amended.

Motion to Approve	Second	
Jim	Terry	
Roll Call Vote	For <input checked="" type="checkbox"/> Max	Against <input type="checkbox"/> Max

	<input checked="" type="checkbox"/> Dave <input checked="" type="checkbox"/> Terry <input checked="" type="checkbox"/> Mike <input checked="" type="checkbox"/> Jim	<input type="checkbox"/> Dave <input type="checkbox"/> Terry <input type="checkbox"/> Mike <input type="checkbox"/> Jim
Public Comments	Person Reporting	
University of Nebraska – Lincoln	Steve Gamet and Ben Loseke	
<p>Steve Gamet and Ben Loseke provided an update regarding UNL’s viticulture projects.</p> <p>The High Tunnel project ended last year but has been continued. Currently, table grapes are being grown. They’re looking to expand project to include vinifera cultivars as well.</p> <p>Crop load evaluation has begun on wine grapes. They’re looking to see if crop load influences grape quality. The project started this year and will continue for 3 years. Currently they’re evaluating Frontenac but looking to do up to 3 types of grapes.</p> <p>Overall, many projects are still underway as well as educational classes.</p>		
Nebraska Winery and Grape Growers Association	Kathi Schildt, ED and Mick McDowell, President	
<p>Kathi Schildt and Mick McDowell provided an update of Nebraska Grape and Winery Growers Association activities. A report was handed out to the board for their review.</p> <p>Toast Nebraska will be held May 15 & 16, 2020 at Vala’s Pumpkin Patch. The online registration process was designed and marketed. The staff downloaded all prior records from Ticket Spice. Whitney Parks has sent sponsorship forms to Pinnacle Bank, HyVee and NE Lottery. A message has been left at Southeast Community College, Jones Bank and Union Bank & Trust. Whitney plans to also contact Woodhouse and Aldi’s. Two vendors have registered for the event and twenty-two attendees have paid/registered. All wineries have been contacted that are members and fourteen wineries have confirmed their attendance for 2020. The Toast Committee met in January to discuss speakers and bands for participation at the event.</p> <p>The 2020 Passports will be a 3.5” x 5” with a gold foil stamped cover with a 5” x 14” double fold out for the collection of stamps would look best. The staff selected Firespring in Lincoln to save on shipping and use a local Nebraska printer. The vendor indicated that the turnaround time will be 2-3 weeks; the target date is February 11, 2020 – Legislative Day to deliver a Passport to each Senator. The Nebraska Game and Parks Commission is willing to provide distribution at their parks Almost 1,000 Passports were completed and returned in 2019.</p> <p>Staff met with the Nebraska Tourism Commission regarding the Agritourism and Adventure Travel Workshop on February 25-27, 2020. They would like to have wineries participate and provide tastings onsite. In addition, they would like to have NWGGA be a Bronze Level sponsor. Max McFarland asked if NWGGA was going to get the SNL’s for the event. Kathi confirmed that NWGGA will be in charge of getting the SNL’s.</p>		

Overall, the NWGGA Board has many new things in the works for the upcoming year. Some of these include serving on the Program Committee for the 2020 Nebraska Tourism Commission Annual Conference, updating social media and website pages and continued work towards sending a membership newsletter quarterly.

Nebraska Tourism Commission	Karen Kollars
------------------------------------	----------------------

Karen reported the Agritourism and Adventure Travel Workshop is February 25-27, 2020 at the Lied Lodge and Conference Center in Nebraska City. Also, January 28 is National Plan Your Vacation Day.

Old Business

2019-2020 Fiscal Report

Discussion

Patty Richard shared updates to the board regarding what funds have been paid out from grants and what grants are still available.

The Nebraska Sustainable Project funded under the Specialty Crop Block Grant remains open until September 2020. The funds were originally written to develop a Nebraska Sustainable Pilot Program, which included bringing speakers/trainers who are national sustainable practices experts to Nebraska to help shape Nebraska’s program. This part of the project was completed. The speakers/trainers spoke at the state’s grape and wine conferences in 2017 and 2018, which was called, “Vindemia.”

This federal grant allocated \$20,000 to Personnel, \$2,000 to Travel, \$1,000 for Supplies, \$24,000 for Contractual (which included speaker/training expenses), and \$7,000 for facility rental. Max McFarland wanted to know if \$20,000 of these funds could be used to pay NWGGA Executive Director salary. Casey stated that if the board decided to do this, he would need to write a new contract for the board to review and approve. Also, Kathi would need to submit an invoice of hours worked to bill back to the grant.

The Passport budget is currently at \$30,000. Kathi Schildt shared two bids and a description of each Passport she received to produce the 2020 Passports. One bid was under \$30,000 and the other bid was slightly higher. Dave Hanna suggested the budget be increased by \$5,000 for a total of \$35,000 in order to ensure NWGGA has enough funds to cover the cost and to be able to go with the above budget option. Casey Foster will need to write an amendment for this increase. A motion was made to increase the Passport budget to \$35,000.

Motion to Approve	Second
Dave	Terry

Roll Call Vote	For	Against
	<input checked="" type="checkbox"/> Max <input checked="" type="checkbox"/> Dave <input checked="" type="checkbox"/> Terry <input checked="" type="checkbox"/> Mike <input checked="" type="checkbox"/> Jim	<input type="checkbox"/> Max <input type="checkbox"/> Dave <input type="checkbox"/> Terry <input type="checkbox"/> Mike <input type="checkbox"/> Jim

Patty Richard mentioned that the board could allocate anywhere from \$100,000-\$110,000 funds in 2019-2020 that would aid in the betterment of the grape and wine industry. The funds would need to be spent by June 2020. The board discussed the option of increasing the Toast budget from \$30,000 to \$60,000. However, Patty would like more time to make sure the increased funds for the Passport is authorized before the board allocates this increase. Also, Patty would like to sync up with Kathi on notes to see if it makes sense to increase the Toast budget. A motion was by the board to approve increasing the Toast Budget based on what results arise from Patty and Kathi's findings.

Motion to Approve <input type="text" value="Jim"/>	Second <input type="text" value="Mike"/>	
Roll Call Vote	For <input checked="" type="checkbox"/> Max <input checked="" type="checkbox"/> Dave <input checked="" type="checkbox"/> Terry <input checked="" type="checkbox"/> Mike <input checked="" type="checkbox"/> Jim	Against <input type="checkbox"/> Max <input type="checkbox"/> Dave <input type="checkbox"/> Terry <input type="checkbox"/> Mike <input type="checkbox"/> Jim

New Business

Other

Discussion
 Max McFarland made a motion that the board conduct a Request for Proposal (RFP) process again in the spring of 2020 to solicit proposals from individual growers, farm wineries, organizations, industry groups or academic institutions that aim to assist in the betterment of Nebraska's grape and wine industry. A motion was made to release the 2020 RFP instructions on March 1, 2020 with an application submission deadline of May 1, 2020.

Motion to Approve <input type="text" value="Mike"/>	Second <input type="text" value="Jim"/>	
Roll Call Vote	For <input checked="" type="checkbox"/> Max <input checked="" type="checkbox"/> Dave <input checked="" type="checkbox"/> Terry <input checked="" type="checkbox"/> Mike <input checked="" type="checkbox"/> Jim	Against <input type="checkbox"/> Max <input type="checkbox"/> Dave <input type="checkbox"/> Terry <input type="checkbox"/> Mike <input type="checkbox"/> Jim

Other Business

Adjourn

Discussion

The board would like to hold another meeting when NWGGA and NDA are ready. Megan will send the proposed dates out to the board when the time comes. A motion was made to adjourn.

Motion to Approve

Jim

Second

Mike

Roll Call Vote

For

- Max
- Dave
- Terry
- Mike
- Jim

Against

- Max
- Dave
- Terry
- Mike
- Jim

The meeting adjourned at 7:56 p.m.

Nebraska Grape and Winery Board Meeting Minutes

June 25, 2020	5:00 p.m.	Via Zoom Conference Call
Meeting called by	Nebraska Grape and Winery Board	
Type of meeting	Board Meeting	
Facilitator	Max McFarland (Chairman)	
Note takers	Megan Benes	
Attendees	Max McFarland, Dave Hanna, Terry Ryan, Jim Ballard, Mike Schilling, Casey Foster, Patty Richard, Ashley Bonebright, Kathi Schildt, Mick McDowell, Karen Kollars, Paul Read, and Megan Benes	

Call to Order

Open Meetings Act	Public Notice was published in the <i>Beatrice Daily Sun</i> (06/11/20), <i>Kearney Hub</i> (06/11/20), <i>Grand Island</i> (06/11/20), <i>Norfolk Daily</i> (06/11/20), <i>North Platte</i> (01/16/20), <i>Star Herald</i> (06/11/20)
--------------------------	--

Approval of Agenda

Discussion
 The meeting was called to order at 5:18 p.m. A motion was made to approve the meeting agenda.

Motion to Approve	Second	
Dave	Jim	
Roll Call Vote	For <input checked="" type="checkbox"/> Max <input checked="" type="checkbox"/> Dave <input checked="" type="checkbox"/> Terry <input checked="" type="checkbox"/> Mike <input checked="" type="checkbox"/> Jim	Against <input type="checkbox"/> Max <input type="checkbox"/> Dave <input type="checkbox"/> Terry <input type="checkbox"/> Mike <input type="checkbox"/> Jim

Approval of January 21,2020 Meeting Minutes

Discussion
 A copy of the January 21, 2020 meeting minutes was handed out to all board members to review. A motion was made to accept the minutes as amended.

Motion to Approve	Second	
Terry	Dave	
Roll Call Vote	For <input checked="" type="checkbox"/> Max <input checked="" type="checkbox"/> Dave <input checked="" type="checkbox"/> Terry	Against <input type="checkbox"/> Max <input type="checkbox"/> Dave <input type="checkbox"/> Terry

	<input checked="" type="checkbox"/> Mike <input checked="" type="checkbox"/> Jim	<input type="checkbox"/> Mike <input type="checkbox"/> Jim
Public Comments		Person Reporting
University of Nebraska – Lincoln		Paul Read
<p>Due to COVID-19, Paul has had to spend nearly 2 months out of the office which slowed down the progress for some projects. Also, travel was not allowed without approval, adding another challenge but Paul Read provided an update regarding UNL’s viticulture projects.</p> <p>The High Tunnel project ended last year but has been continued. Since table grapes worked so well in high tunnel, they plan to try other grapes.</p> <p>The ground cover project has been completed as well. A couple publications have come from the project with more publications to come.</p> <p>They planned to do more research on the Hail Damage Prevention project, but COVID-19 has halted progress on this.</p> <p>Lastly, Paul continues to teach wine classes at the University and hopes the progress on current projects can be continued soon.</p>		
Nebraska Winery and Grape Growers Association		Kathi Schildt, ED and Mick McDowell, President
<p>Kathi Schildt and Mick McDowell provided an update of Nebraska Grape and Winery Growers Association activities.</p> <p>NWGGA’s Annual meeting went very well. Also, NWGGA held a seminar on February 2nd which had 16 members join and a workshop was held on June 2nd at Capital View Winery about Barrel Selection. More workshops are in the works.</p> <p>The Toast Nebraska event has been postponed until Fall due to COVID-19. No location or dates have been confirmed yet. They had over 300 attendees register for the event, 18 wineries participating and 11 vendors. All have been notified of the postponement and are on standby for a Fall event.</p> <p>The 2020 Passports continue to be distributed. NWGGA ran a “Wine for the Line” campaign that was featured on 10/11 news and Channel 8. Their campaign was very successful.</p> <p>Staff has gotten the newsletter started back up. Board members have been submitting articles to contribute to the content of the newsletter which has been a good resource for members and staff has made updates and improvements to the NWGGA website.</p>		
Nebraska Tourism Commission		Karen Kollars
<p>Karen reported that the Tourism Passports were pushed out on June 10th. They have already had 3 ladies finish all 70 stops. Their conference is scheduled for October 20-22, 2020 in Grand Island. The conference is still a go currently. However, they will be offering the conference in-person and virtually. Lastly, they have not done any marketing outside of the state this year since travel is down due to COVID-19.</p>		

Casey gave a report on activities he is working on that impact the Nebraska Grape and Wine industry.

The NE Specialty Crop program has had 27 projects submitted for funding with 15 projects completed.

Old Business

2019-2020 Fiscal Report

Discussion

Casey handed out the year-end report for the 2019-2020 fiscal year and reviewed the report with the Board. A motion was made to accept the report as discussed.

Motion to Approve	Second
Terry	Dave

Roll Call Vote	For	Against
	<input checked="" type="checkbox"/> Max <input checked="" type="checkbox"/> Dave <input checked="" type="checkbox"/> Terry <input checked="" type="checkbox"/> Mike <input checked="" type="checkbox"/> Jim	<input type="checkbox"/> Max <input type="checkbox"/> Dave <input type="checkbox"/> Terry <input type="checkbox"/> Mike <input type="checkbox"/> Jim

Patty Richard mentioned that the board could allocate anywhere from \$100,000-\$110,000 funds in 2019-2020 that would aid in the betterment of the grape and wine industry. The funds would need to be spent by June 2020. The board discussed the option of increasing the Toast budget from \$30,000 to \$60,000. However, Patty would like more time to make sure the increased funds for the Passport is authorized before the board allocates this increase. Also, Patty would like to sync up with Kathi on notes to see if it makes sense to increase the Toast budget. A motion was by the board to approve increasing the Toast Budget based on what results arise from Patty and Kathi's findings.

Motion to Approve	Second
Jim	Mike

Roll Call Vote	For	Against
	<input checked="" type="checkbox"/> Max <input checked="" type="checkbox"/> Dave <input checked="" type="checkbox"/> Terry <input checked="" type="checkbox"/> Mike <input checked="" type="checkbox"/> Jim	<input type="checkbox"/> Max <input type="checkbox"/> Dave <input type="checkbox"/> Terry <input type="checkbox"/> Mike <input type="checkbox"/> Jim

New Business

Other

Discussion

Max McFarland made a motion that the board conduct a Request for Proposal (RFP) process again in the spring of 2020 to solicit proposals from individual growers, farm wineries, organizations, industry groups or academic institutions that aim to assist in the betterment of Nebraska’s grape and wine industry. A motion was made to release the 2020 RFP instructions on March 1, 2020 with an application submission deadline of May 1, 2020.

Motion to Approve

Mike

Second

Jim

Roll Call Vote

For

- Max
- Dave
- Terry
- Mike
- Jim

Against

- Max
- Dave
- Terry
- Mike
- Jim

Other Business

Adjourn

Discussion

The board would like to hold another meeting when NWGGA and NDA are ready. Megan will send the proposed dates out to the board when the time comes. A motion was made to adjourn.

Motion to Approve

Jim

Second

Mike

Roll Call Vote

For

- Max
- Dave
- Terry
- Mike
- Jim

Against

- Max
- Dave
- Terry
- Mike
- Jim

The meeting adjourned at 7:56 p.m.

2019 – 2020
FISCAL REPORT

**WINE & GRAPE PRODUCTION PROMOTION BOARD
JULY 1, 2019 – JUNE 30, 2020**

DESCRIPTION	FY2019-20 BUDGET	JUNE 2020	FY2019-20 YR-TO-DATE	YTD AS % OF BUDGET
BEGINNING CASH BALANCE	\$280,733	\$400,157.77	\$280,733.29	
REVENUE:				
Shipper License Fees	\$260,000	\$ 3,500.00	\$328,500.00	
Check-Off Fees	\$ 8,500	\$ 0.00	\$ 7,193.11	
Crushed Grape Fees	\$ 16,000	\$ 0.00	\$ 13,447.41	
Misc. Revenue Adjustment	\$ 0	\$ 0.00	\$ 185.43	
Investment Interest	\$ 4,000	\$ 586.38	\$ 6,310.79	
Total Revenue	\$288,500	\$ 4,086.38	\$355,636.74	123%
TOTAL AVAILABLE CASH	\$569,233	\$404,244.15	\$636,370.03	
EXPENDITURES:				
State:				
Printing (Annual Report)	\$ 500	\$ 0.00	\$ 0.00	
NDA Administration	\$ 4,800	\$ 300.99	\$ 5,300.47	
Board Expense – Board Meetings	\$ 3,600	\$ 0.00	\$ 1,548.06	
Board Expense – Printing/Postage	\$ 0	\$ 0.00	\$ 122.31	
Board Meeting Notices	\$ 250	\$ 22.01	\$ 112.13	
Board Expense – Industry Promotion	\$ 7,500	\$ 0.00	\$ 145.00	
Board Services Contractor	\$ 5,100	\$ 425.00	\$ 4,250.00	
NWGGA-Executive Management Services	\$ 118,000	\$ 0.00	\$ 85,202.42	
	\$ 139,750	\$ 748.00	\$ 96,680.39	
Promotion/Education:				
NWGGA Marketing Program				
NWGGA Passport Program	\$ 30,000	\$ 0.00	\$ 31,574.31	
NWGGA Marketing Campaign Guide	\$ 41,800	\$ 0.00	\$ 32,529.42	
NWGGA Video/Photography Library	\$ 18,200	\$ 0.00	\$ 0.00	
NWGGA Nebraska Wine Summit	\$ 5,000	\$ 0.00	\$ 0.00	
NWGGA Toast Nebraska	\$ 30,000	\$ 0.00	\$ 12,665.93	
NWGGA Industry Professional Development	\$ 7,500	\$ 0.00	\$ 850.52	
NWGGA Education Programs	\$ 19,500	\$ 0.00	\$ 4,012.49	
NAYI Sponsorship	\$ 5,000	\$ 0.00	\$ 5,000.00	
	\$157,000	\$ 0.00	\$ 86,632.67	
Research:				
UNL Viticulture Program/Lab Technician	\$ 80,066	\$ 33,687.17	\$ 49,603.52	
Unobligated Expenditures	\$ 7,132	\$ 0.00	\$ 0.00	
Prior Year Obligated Budget & Expenses:				
NWGGA Executive Director Salary 18/19	\$ 7,500	\$ 0.00	\$ 7,500.00	
NWGGA Marketing Program 18/19	\$ 20,998	\$ 0.00	\$ 21,318.34	
NWGGA Wine America	\$ 3,788	\$ 0.00	\$ 1,684.44	
NDA Fee Collection	\$ 2,771	\$ 0.00	\$ 3,141.69	
	\$ 35,057	\$ 0.00	\$ 33,644.47	
Total Expenditures	\$383,948	\$ 34,435.17	\$266,561.05	69%
Adjustment to Fund Balance	\$ 0	\$ 0.00	\$ 0.00	
ENDING CASH BALANCE	\$ 185,285	\$ 369,808.98	\$369,808.98	

*The ending cash balance is 100% invested in the short-term investment pool.
Percent of Fiscal Year Elapsed; 100%
FY18-19 Revenue to Date \$321,655.96
FY18-19 Expenditures to Date: \$241,116.80

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

#18-13-325

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 provide 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 funds to pay for the viticulture technician’s and lab technician’s salaries and benefits, student hourly labor, fertilizers, chemicals, planting stock, fuel, vehicle rental, travel costs, computer support, and publications. These expenses are involved in the oversight and implementation of Viticulture Program activities.
 - b. The activities will consist of:

- i. Determining if crop size reduction makes better wine;
 - ii. Cultivar and new genotype evaluation;
 - iii. Table grape production in high tunnels and controlling climate variability;
 - iv. Multi-state project evaluating performance on a common set of grape cultivars in multiple locations;
 - v. Collaboration with UNL Food Science and Technology Department;
 - vi. Ground cover impact on new vineyard establishment;
 - vii. Evaluation of cold-hardiness, spring bud-break, and cold temperature damage prevention and management;
 - viii. Cultivar and growing degree days;
 - ix. Hail damage prevention; and
 - x. Grapevine trunk disease.
- c. Provide a written final report to the Department by July 15, 2020 describing the results of the project and the use of funds to be made public by the Nebraska Grape and Winery Board.
 - d. Provide services from July 1, 2019, through June 30, 2020.

B. ALLOWABLE COSTS AND PAYMENTS

- 1. The Department will provide a sum of up to eighty thousand sixty-six dollars (\$80,066) from the Winery and Grape Producers Promotional Fund to the Viticulture Program upon both parties' signature to this Agreement and the Viticulture Program 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, 2020.
- 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, 2019, to July 15, 2020**, 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 the Viticulture Program, except that the Department shall pay the Viticulture Program for the cost of services 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 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 certifies 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 the Office of Management and Budget's Uniform Guidance, 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: 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.
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.

G. COMMUNICATION BETWEEN PARTIES:

All notices, requests, or other communications shall be in writing and shall be deemed to have been given if delivered personally, emailed, or mailed, by U.S. Mail or other mail delivery service, to the addresses set forth herein. Either party may change its email address or mailing address for notification purposes by giving notice of the change and setting forth the new address and the effective date.

For the Department:
Casey Foster
Nebraska Department of Agriculture
PO Box 94947
Lincoln, NE 68509-4947
casey.foster@nebraska.gov

For the Viticulture Program:
Dr. Paul Read
University of Nebraska - Lincoln
PLSH 377J
Lincoln, NE 68583
402-472-5136
pread1@unl.edu

With a copy to:
Jeanne Wicks
University of Nebraska - Lincoln
Office of Sponsored Programs
151 Prem S. Paul Research Center
2200 Vine Street
P.O. Box 830861
Lincoln, NE 68583-0861

IN WITNESS WHEREOF, the parties executed this Agreement.

DEPARTMENT OF AGRICULTURE

Date

Steve Wellman, 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
#18-13-281

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 provide for 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:

A. DESCRIPTION OF WORK

1. NWGGA agrees to the following:

- a. 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, Intern salary, travel expenses, surety bond, legal counsel, banking costs, office supplies, software, postage, business insurance, CPA services, bookkeeping services, and meeting expenses.**

- b. Provide a written final report to the Department by July 15, 2020 describing the results of the project and the use of funds to be made public by the Nebraska Grape and Winery Board.
- c. Provide services from July 1, 2019, through June 30, 2020.

B. ALLOWABLE COSTS and PAYMENTS

1. The Department shall provide a sum of up to one hundred eighteen thousand dollars (\$118,000) 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, 2019.
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 enumerate herein.
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, 2019, to July 15, 2020**, 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 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.

- 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 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 the Office of Management and Budget's Uniform Guidance, 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: 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.
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.

G. COMMUNICATION BETWEEN PARTIES:

All notices, requests, or other communications shall be in writing and shall be deemed to have been given if delivered personally, emailed, or mailed, by U.S. Mail or other mail delivery service, to the addresses set forth herein. Either party may change its email address or mailing address for notification purposes by giving notice of the change and setting forth the new address and the effective date.

For the Department:
Casey Foster
Nebraska Department of Agriculture
PO Box 94947
Lincoln, NE 68509-4947
casey.foster@nebraska.gov

For NWGGA:
Lori Paulsen
NWGGA
PO Box 82081
Lincoln, NE 68501
lpaulsen@nebraskawines.com

IN WITNESS WHEREOF, the parties executed this Agreement.

DEPARTMENT OF AGRICULTURE

Date

Steve Wellman, Director

NEBRASKA WINERY AND GRAPE GROWERS
ASSOCIATION

Date

Ted Schekirke, 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 marketing and promotional program to increase the awareness, consumption, and preference for Nebraska 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:

A. DESCRIPTION OF WORK

1. NWGGA agrees to:
 - a. Utilize funds to implement a Nebraska wine and grape industry 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.

- ii. Logo Development/Materials Development/Photo/ Video Resources. Review, develop, or adjust a visual identity of the NWGGA Vintage Nebraska brand. Additional resources including the possibility of photos, videos, print materials, and other tools will be executed in order to have them available to market Nebraska wines. They will be used to create advertisements that will be placed via paid and earned media.
- iii. Media Buy Plan and Placement. Develop a media plan for NWGGA based on the campaign's strategy and target audiences. The media plan will include recommendations for media placement in coordination with the campaign's goals. Research will be conducted to find the best advertising areas and determine which platforms will provide the best reach and return on investment. Examples include print and digital advertisements, direct mail campaigns, and promotion of Nebraska's 25 year wine industry and signature wines. A Nebraska Wine Story Promotion and Quality Difference Program will also be components of this marketing effort.
- iv. Nebraska Wine Summit. Develop a Nebraska Wine Summit with retailers, hotels, and media by hosting a wine and food paring with vineyards, wineries, and potential influencers.
- v. Provide a written final report to the Department by July 15, 2020 describing the results of the project and the use of funds, to be made public by the Nebraska Grape and Winery Board.

b. Provide services from July 1, 2019, through June 30, 2020.

B. ALLOWABLE COSTS and PAYMENTS

1. The Department shall provide a sum of up to eighty thousand dollars (\$80,000) 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, 2020.

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.
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, 2019, to July 15, 2020**, 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, subtracting any additional costs caused by 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 the Office of Management and Budget's Uniform Guidance, 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: 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.
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.

G. COMMUNICATION BETWEEN PARTIES:

All notices, requests, or other communications shall be in writing and shall be deemed to have been given if delivered personally, emailed, or mailed, by U.S. Mail or other mail delivery service, to the addresses set forth herein. Either party may change its email address or mailing address for notification purposes by giving notice of the change and setting forth the new address and the effective date.

For the Department:
Casey Foster
Nebraska Department of Agriculture
PO Box 94947
Lincoln, NE 68509-4947
casey.foster@nebraska.gov

For NWGGA:
Lori Paulsen
NWGGA
PO Box 82081
Lincoln, NE 68501
lpaulsen@nebraskawines.com

IN WITNESS WHEREOF, the parties executed this Agreement.

DEPARTMENT OF AGRICULTURE

Date

Steve Wellman, Director

NEBRASKA WINERY AND GRAPE GROWERS
ASSOCIATION

Date

Ted Schekirke, 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 meetings and conferences associated with the wine and grape 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:

A. DESCRIPTION OF WORK

1. NWGGA agrees to utilize funds to offset the costs associated with the following:
 - a. Wine America's State Regional Associations Advisory Council membership dues;
 - b. Executive Director's registration fees and travel expenses to attend the Wine America Fall Membership Conference and the National Wine and Grape Policy Conference and other related state and regional association committee meetings; and

- c. Attendance at any Nebraska or regional conferences, fairs, or trade shows to promote the Nebraska wine and grape industry.
2. NWGGA will provide a written final report to the Department by July 15, 2020 describing the results of the project and the use of funds to be made public by the Nebraska Grape and Winery Board.
3. NWGGA will provide services from July 1, 2019, through June 30, 2020.

B. ALLOWABLE COSTS and PAYMENTS

1. The Department shall provide a sum of up to seven thousand five hundred dollars (\$7,500) 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, 2020.
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.
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, 2019, to July 15, 2020**, 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, subtracting any additional costs caused by 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 the Office of Management and Budget's Uniform Guidance, 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: 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.

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.

G. COMMUNICATION BETWEEN PARTIES:

All notices, requests, or other communications shall be in writing and shall be deemed to have been given if delivered personally, emailed, or mailed, by U.S. Mail or other mail delivery service, to the addresses set forth herein. Either party may change its email address or mailing address for notification purposes by giving notice of the change and setting forth the new address and the effective date.

For the Department:
Casey Foster
Nebraska Department of Agriculture
PO Box 94947
Lincoln, NE 68509-4947
casey.foster@nebraska.gov

For NWGGA:
Lori Paulsen
NWGGA

PO Box 82081
Lincoln, NE 68501
lpaulsen@nebraskawines.com

IN WITNESS WHEREOF, the parties executed this Agreement.

DEPARTMENT OF AGRICULTURE

Date

Steve Wellman, Director

NEBRASKA WINERY AND GRAPE GROWERS
ASSOCIATION

Date

Ted Schekirke, President

THE FIRST AMENDMENT TO THE AGREEMENT

BETWEEN THE

NEBRASKA DEPARTMENT OF AGRICULTURE

and

NEBRASKA WINERY AND GRAPE GROWERS ASSOCIATION

#18-13-333

The Agreement 18-13-33, effective July 1, 2019, to July 15, 2020, between the Nebraska Department of Agriculture and the Nebraska Winery and Grape Growers Association, shall be amended as follows:

Paragraph 1. of Section A shall be amended to read:

1. NWGGA agrees to:
 - a. Utilize up to sixty thousand dollars (\$60,000) to pay for costs associated with the Toast Nebraska Wine Festival. Example of expenses will include costs associated with advertising, marketing, facility use and rental, equipment rental, supplies, and promotion of the event.

Paragraph 1. of Section B. shall be amended to read:

1. The Department shall provide a sum of up to sixty thousand dollars (\$60,000) from the Winery and Grape Producers Promotional Fund to NWGGA upon both parties signing this Agreement and NWGGA incurring an obligation.

Paragraph 3. Section G shall be amended to read:

Kathi Schildt
Executive Director
Nebraska Winery & Grape Growers Association
521 First Street, PO Box 10
Milford, NE 68405

The First Amendment shall become effective as of the date of last signature.

DEPARTMENT OF AGRICULTURE

Date

Steve Wellman, Director

NEBRASKA WINERY AND GRAPE GROWERS
ASSOCIATION

Date

Mick McDowell, President

AGREEMENT
BETWEEN THE
NEBRASKA DEPARTMENT OF AGRICULTURE
AND THE
NEBRASKA WINERY AND GRAPE GROWERS ASSOCIATION
#18-13-333

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 costs associated with the Toast Nebraska wine festival.

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:

A. DESCRIPTION OF WORK

1. NWGGA agrees to:
 - a. Utilize up to thirty thousand dollars (\$30,000) to pay for costs associated with the Toast Nebraska Wine Festival. Example of expenses will include costs associated with advertising, marketing, facility use and rental, equipment rental, supplies, and promotion of the event.
 - b. Provide a written final report to the Department by July 15, 2020 describing the results of the project and the use of funds to be made public by the Nebraska Grape and Winery Board.

c. Provide services from July 1, 2019, through June 30, 2020.

B. ALLOWABLE COSTS and PAYMENTS

1. The Department shall provide a sum of up to thirty thousand dollars (\$30,000) 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, 2020.
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.
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, 2019, to July 15, 2020**, 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, subtracting any additional costs caused by 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 the Office of Management and Budget's Uniform Guidance, 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: 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.

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.

G. COMMUNICATION BETWEEN PARTIES:

All notices, requests, or other communications shall be in writing and shall be deemed to have been given if delivered personally, emailed, or mailed, by U.S. Mail or other mail delivery service, to the addresses set forth herein. Either party may change its email address or mailing address for notification purposes by giving notice of the change and setting forth the new address and the effective date.

For the Department:
Casey Foster
Nebraska Department of Agriculture
PO Box 94947
Lincoln, NE 68509-4947
casey.foster@nebraska.gov

For NWGGA:
Lori Paulsen
NWGGA
PO Box 82081
Lincoln, NE 68501
lpaulsen@nebraskawines.com

IN WITNESS WHEREOF, the parties executed this Agreement.

DEPARTMENT OF AGRICULTURE

Date

Steve Wellman, Director

NEBRASKA WINERY AND GRAPE GROWERS
ASSOCIATION

Date

Ted Schekirke, President

AGREEMENT
BETWEEN THE
NEBRASKA DEPARTMENT OF AGRICULTURE
AND THE
NEBRASKA WINERY AND GRAPE GROWERS ASSOCIATION
#18-13-357

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 conduct a series of educational seminars and publish written materials for current and potential grape growers and wineries.

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:

A. DESCRIPTION OF WORK

1. NWGGA agrees to utilize funds for the following activities. Funds will be used to pay for costs associated with these activities such as literature, room rental, attendee lunches, and speaker honorariums and travel expenses. Funds will also be used to pay for travel and rental expenses of any mechanized equipment used in field demonstrations.
 - a. Promotional literature for potential and new growers to:
 1. Understand the risks and rewards of growing grapes in Nebraska; and

2. Gain information on plant diseases, plant health, plant nutrients, spray programs, and fruit quality.
 - b. Host a seminar to provide education and literature to Nebraska wine makers on Federal and State rules and regulations.
 - c. Host a series of seminars to provide education to Nebraska wine makers on wine quality issues.
 - d. Host a series of seminars to provide education to Nebraska grape growers to address vineyard care and health.
 - e. Host Sensitive Crop Herbicide Drift seminars to educate grape growers how to identify and reduce drift damage.
 - f. Host Sensitive Crop Herbicide seminars to create a coalition of growers with crops susceptible to herbicide drift.
 - g. Host an annual meeting in November 2019 to conduct the annual NWGGA membership meeting that includes several workshops with speakers discussing topics such as enology, viticulture, and marketing strategies.
2. Provide a written report to the Department by July 15, 2020 describing the results of the project and the use of funds to be made public by the Nebraska Grape and Winery Board.
3. NWGGA agrees to provide services from July 1, 2019, through June 30, 2020.

B. ALLOWABLE COSTS and PAYMENTS

1. The Department shall provide a sum of up to nineteen thousand five hundred dollars (\$19,500) 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, 2020.
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.

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, 2019, to July 15, 2020**, 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, subtracting any additional costs caused by 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 the Office of Management and Budget's Uniform Guidance, 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: 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.
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.

G. COMMUNICATION BETWEEN PARTIES:

All notices, requests, or other communications shall be in writing and shall be deemed to have been given if delivered personally, emailed, or mailed, by U.S. Mail or other mail delivery service, to the addresses set forth herein. Either party may change its email address or mailing address for notification purposes by giving notice of the change and setting forth the new address and the effective date.

For the Department:
Casey Foster
Nebraska Department of Agriculture
PO Box 94947
Lincoln, NE 68509-4947
casey.foster@nebraska.gov

For NWGGA:
Lori Paulsen
NWGGA
PO Box 82081
Lincoln, NE 68501
lpaulsen@nebraskawines.com

IN WITNESS WHEREOF, the parties executed this Agreement.

DEPARTMENT OF AGRICULTURE

Date

Steve Wellman, Director

NEBRASKA WINERY AND GRAPE GROWERS
ASSOCIATION

Date

Ted Schekirke, President

THE FIRST AMENDMENT TO THE AGREEMENT

BETWEEN THE

NEBRASKA GRAPE AND WINERY BOARD

and

ADVANCED ASSOCIATION MANAGEMENT

#18-13-179

The Agreement 18-13-179, effective July 1, 2019, to June 30, 2020, between the Nebraska Grape and Winery Board, hereinafter called the "Board" and Advanced Association Management hereinafter called the "Independent Contractor," shall be amended as follows:

The Compensation Package shall be amended to read:

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 a total monthly value not to exceed four hundred twenty-five dollars (\$425) per month. After the Agreement begins, it is understood that, if additional costs should be incurred or the total monthly 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, 2020, 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.

The First Amendment shall become effective as of the date of last signature.

Approved:

NEBRASKA GRAPE AND
WINERY BOARD

Date

Max McFarland, Board Chairman

ADVANCED ASSOCIATION
MANAGEMENT

Date

Kathi Schildt, Independent Contractor

AGREEMENT

between

NEBRASKA GRAPE AND WINERY BOARD

and

ADVANCED ASSOCIATION MANAGEMENT

#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 Advanced Association Management, 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 53-305 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. §§53-301 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, 2019 to June 30, 2020, with successive one-year options 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 from grant recipients.
4. Prepare year-end documentation that includes funded project proposals, contracts, and final reports.
5. Compile Board contact information, meeting minutes, grant application instructions, news releases, grants, and Board statutes for assembly into the Grape and Winery Board’s Annual Reports.
6. Write and compile Board meeting minutes, under direction of Board Secretary.
7. Collaborate and communicate with NDA and the Board on a regular basis.
8. Schedule the location, dates, and times of all Board meetings and send this information to Nebraska print media outlets.
9. Coordinate and attend all Board meetings and some industry-related events.

10. 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 five (5) to ten (10) hours per week, with a total monthly value not to exceed four hundred twenty-five dollars (\$425) per month. After the Agreement begins, it is understood that, if additional costs should be incurred or the total monthly 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 one thousand seven hundred dollars (\$1,700) from the Winery and Grape Producers Promotional Fund to the Independent Contractor will be payable, in full, by June 30, 2020, 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 pre-paid 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

ADVANCED ASSOCIATION
MANAGEMENT

Date

Kathi Schildt, 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.

INDEX

<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 twenty-one 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, except that at the expiration of the terms of the members in 2021, the Governor shall appoint one member for a term of one year, two members for a term of two years, and two members for a term of three years, and their successors shall be appointed for a term of three years. Upon completion of a term, a member 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 wine producing 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.

Initiated
July, 2008

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.

2-5601. 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

Section	Subject
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.
 - h. Store and warehouse products produced at the farm winery in a designated, secure, offsite storage facility if the holder of the farm winery license notifies the commission of the location of the facility and maintains, at the farm winery and at the facility, a separate perpetual inventory of the product stored at the facility. Consumption of alcoholic liquor at the facility is strictly prohibited.
- (2) No farm winery shall manufacture wine in excess of fifty thousand gallons per year.
- (3) A farm winery may manufacture and sell hard cider on its licensed premises. A farm winery shall not otherwise distribute the hard cider it manufactures except by sale to a wholesaler licensed under the Nebraska Liquor Control Act
- (4) A holder of a farm winery license may obtain a special designated license pursuant to section 53-124.11.
- (5) A holder of a farm winery license may obtain an annual catering license pursuant to section 53-124.12.

53-123. 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.

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

- (1) If the operator of a farm winery is unable to produce or purchase seventy-five 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 section 53-103.13 for one year.
- (2) It shall be within the discretion of the commission to waive the seventy-five percent 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.

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 53-124.01 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;
- a. 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;

- b. 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;
 - c. 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
 - d. 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 twenty-one 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.