Dear Chairman Chapo and Members of the Nebraska Tourism Commission:

I write on behalf of the Nebraska Travel Association ("NETA") and the Nebraska Association of Convention and Visitors Bureaus ("NACVB") (collectively "the Associations") to express concerns over issues that have come to light over the past several months, including issues recently raised in the report of the State Auditor.\(^1\) For reasons to be explained in this letter, the Associations strongly urge the Nebraska Tourism Commission ("Commission" or "NTC") to take prompt action to effectuate a change in staff leadership at the Commission.\(^2\)

The Associations have a genuine interest in the proper administration of the Commission. NETA’s organization consists of entities, small and large, private and public, for-profit and non-profit, across the state that are part of the state’s third largest industry: travel and tourism. NACVB is organized to provide cooperative action to encourage and enhance the growth of the convention and visitors bureaus in the state of Nebraska. The Associations have actively and very publicly supported the Commission. The Associations supported the legislative decision to create the Commission as an independent agency. Since its creation, NETA has supported the Commission through advocacy at the Nebraska Legislature, particularly advocating for adequate funding for the Commission’s important work. Most recently, NETA supported the Commission’s 2016 Deficit Request.\(^3\)

In expressing our opinions in this letter, the Associations do not ignore the excellent work the Commission has done as a new and independent agency in putting promoting Nebraska. The Commission, especially staff, is to be commended for its excellent and energetic promotion of our great state. As a governmental agency, however, the Commission’s excellence is based not only on its work product, but also its stewardship of tax dollars in developing that work product. But for those tax dollars, the Commission would not exist. The administration of the Commission in the past several months has not matched the excellent work product, not even close. In fact, poor management of the agency has somewhat tarnished the good work it has done. Our objective in writing is to do our part, as a partner of the Commission, in ensuring that the Commission takes proper steps to ensure that its good work is not jeopardized by reckless administration.

The concerns of the Associations may best be expressed by focusing on one particular set of circumstances that has had a direct impact on the Associations members. These circumstances are addressed in the Audit Report and other recently issued public documents. Our intention is not to wage an ad hominem attack on any person, and we believe that methodically spelling out a series of facts is the best means of demonstrating the basis for our concern and request.

The state benefits from local attractions and events that draw travelers from within Nebraska and outside the state. Recognizing this benefit, the Commission administers two grant programs, one to promote attractions drawing in-state travelers, the other promoting attractions with more of a national appeal. Prior to the current Fiscal Year, the Legislature had appropriated $352,000 in aid that was utilized by the Commission for those two grant programs. Of that total, $250,000 was appropriated to

\(^1\) Attestation Report of the Nebraska Tourism Commission, issued by the Auditor of Public Accounts on April 29, 2016 ("Audit Report").

\(^2\) Note that several Commissioners are leaders of NETA. To ensure the neutrality of those Commissioners, none were consulted about the contents of this correspondence. They were merely made aware that it would be sent. They will be seeing the letter for the first time at the same time all members of the Commission receive it.

\(^3\) More on this below.
the Commission's General Fund budget. The remaining $102,000 was appropriated to the Commission's Cash Fund. In 2015, the Legislature increased the Cash Fund Aid substantially — by $500,000 — for Fiscal Year 2015-16 and for Fiscal Year 2016-17.

In the fall of 2015, the Commission submitted a Deficit Request to the State Budget Office, which was considered by the Legislature in 2016. The membership of NETA had concerns that the NTC staff had not informed Commissioners of the specific Deficit Request and that the Commissioners had not approved the Request prior to its submission. Its concerns notwithstanding, upon learning the purpose of the request from Commission Staff — to contract for a study of the economic impact of tourism in Nebraska — NETA actively urged the Legislature to approve the request.

To partially address the Deficit Request, the Legislature, acting on a recommendation by the Appropriations Committee, transferred $452,600 from Cash Fund Aid to Cash Fund Operations. Members of the Appropriations Committee informed NETA representatives that the transfer was made because the Commission had no plans to use any of the $500,000 for aid purposes — e.g., to augment its grant programs or create new aid programs — during the 2015-2016 Fiscal Year, which at that point was three-quarters complete. Discussion was had about making a two-year transfer from Aid to Operation in the NTC Cash Fund, but NETA expressed its concerns about doing so, namely, that such Aid is important to local communities in promoting tourism attractions and events. The Appropriations Committee did not recommend a transfer for the second year of the biennium, meaning the additional $500,000 will fortunately be available for Aid to local communities. In a recommendation made to the Marketing Committee of the Commission this spring with regard to use of the appropriation in 2016-17, NETA urged the Commission to utilize the $500,000 for Aid, adding:

“There is risk that the additional appropriation will not be continued in future fiscal years, if not expended for the purposes it was appropriated.”

At that point, NETA did not express complaint about the reasons underlying the loss of Aid for Fiscal Year 2015-16 as a result of the transfer. Its focus was on ensuring such loss did not occur again. After reviewing the Audit Report, those underlying reasons take on a new degree.

Contrary to explanations offered by Commission staff upon which NETA relied in deciding to support the Deficit Request, NETA learned from the above-mentioned discussions it had with members of the Appropriations Committee that the NTC intended to use only a small portion of the Deficit Request for the economic impact study; the majority of the Request was needed to cover cost overruns in Commission Operations. Mention was made by the Appropriations Committee of contracts costing more than expected.

The Chairman of the Appropriations Committee expressed similar concerns. Letter from Sen. Heath Mello, Chairman of the Appropriations Committee, to Mr. John Chapo, Chairman of the Commission, February 29, 2016 (“Appropriations Committee Letter”).

It also added $297,400 to the Commission's Cash Fund Operations budget, effectively increasing that budget by $750,000, the amount of the Deficit Request.

See NETA Recommendations for NTC Grants, presented to Marketing Committee April 14, 2016.

Id. Not only was the $500,000 in newly appropriated Cash Funding not expended, but no Cash Fund Aid was expended, as noted in the Audit Report. The prior year, as noted in the Report, only $6,000 of the $102,600 earmarked for Aid was expended. Audit Report at p. 37.
In conversations NETA representatives had with Commission staff prior to the Legislature’s final approval of the transfer, Commission staff was less than forthcoming about the shortfall in operations. When a NETA representative commented on the shortfall and mentioned perhaps that contracts had proved more costly than anticipated, Commission staff replied curtly that they did not know what contracts we might be talking about.\(^6\)

The Audit Report brings to light those contracts and the startling extent of how much the Commission paid over budget for the contracts. The Audit Report also brings to light numerous improper and undocumented expenses paid by the Commission, not to mention other lapses in professional judgment and reckless use of taxpayer money.

Based on its observations over the lifetime of the independent Commission, particularly those of the past twelve months, the Associations believe that the problems addressed in this letter and in the Audit Report cannot be addressed without a change in Commission staff leadership. The Audit Report echoes concerns the Associations have long held and others have expressed about Commission administration:

\(^6\) Shockingly, the Commission’s comment in the Audit Report perpetuates a categorically false explanation for the budget “shortfall,” as the Commission calls it. The Commission said:

“In June of 2015, the Nebraska Legislature approved that there be no carryover of any previously appropriated funds. For the Commission, this caused a deficit situation due to the nature of the Commission’s already awarded Marketing and Community Impact Grants. Grant reimbursement cycles were not in sync with the Legislature’s action to not permit for funding carryover, causing a financial shortfall for the Commission. The Commission worked with State Accounting on a regular basis to redistribute funds to adhere to the Legislature’s decision and to keep the Commission’s budget in compliance. The budget discrepancy is the result of several accounting and miscoding errors. The Commission has worked closely with State Accounting to ensure that all state aid will be allocated as designated, during the 2015-16 and 2016-17 designated year(s).”

NETA went to great lengths to understand claims made last summer (2015) by the Commission director that the Legislature had removed $250,000 in grant funding to the Commission during the 2015 Session. That claim was incorrect; in fact, the Legislature appropriated an additional $500,000 for grants (Aid), as explained above. It is also untrue, as the Commission wrote in response to the Audit, that the Nebraska Legislature did not approve carry-over of appropriated funds. All of the Commission’s grant funding was carried over from FY2014-15 into FY2015-16, despite Commission staff failing to properly commit it prior to the end of the 14-15 Fiscal Year. In short, it is not accurate that the Legislature’s action lead to “financial shortfall.”

As mentioned, after thorough research and investigation, NETA through a series of emails last fall explained to its membership and NTC staff that all grant funds had carried over and not lapsed, contrary to Commission staff claims last summer. Those claims were reiterated later in the fall, after the Deficit Request was made. Again, NETA attempted to correct NTC staff.

The Commission’s response to the Audit might be excused as a misunderstanding had not NETA on more than one occasion painstakingly clarified for Commission Staff what did and did not happen during the 2015 Legislative Session with regard to grant funding.
"The Director exercised unilateral control, including approval authority, over most day-to-day business transactions, and the Commissioners were not adequately involved in overall operations."

These issues are not new. They are not isolated. And they have been recognized and criticized by NETA and others, to no avail.

To the concern raised in the Appropriations Committee Letter, that the "deficit request was not discussed or approved by the Commission prior to its submission," the NTC Director responded:

"I am unsure what is going on here, but I would like to share with you that the Commission at their August meeting, [sic] was made aware that we would be seeking a deficit request for the applied measures. In addition, this topic was also discussed again at the October Commission [meeting]. There was no motion to submit or to not submit with mention and discussion stating that it is important to seek funds from our Cash Fund to continue to advance tourism. [sic] Stating as a consensus to move ahead."

Though difficult to follow, the response claims that the Deficit Request was discussed at the August meeting. While mention was made of a possible general need for such a request, no specifics were discussed. Contrary to the response, the Deficit Request was not discussed or even mentioned generally at the October Commission meeting, which took place only a few days prior to the date the Request was officially submitted. It is categorically false that the Commission consensus to submit the Request until over two months after its submission.

In addition to the Auditor and the Appropriations Committee, the Commission’s own consultants, in updating a 2012 strategic plan earlier this year, noted concerns about staff’s control of the agency and lack of communications with or involvement of the Commissioners:

"There appears to be a need to better clarify the Board’s role, degree of oversight of Commission staff, and other related issues. There continues to be some discussion and perceptions of ambiguity among the Board and staff concerning decision-making roles/responsibilities, involvement and/or oversight of certain types of decisions and strategic initiatives (both major and minor, specific and non-specific). While the Commission’s Governing Principles document (approved March 2013) delineates certain responsibilities – such as those relating to budgets, elections, meetings, and administration – specific guidance on key roles, oversight, decision-making, and communication issues is presently relatively limited."

The foregoing discussion of the Commission’s mismanagement of the $500,000 in Aid appropriated to it by the 2015 Legislature demonstrates one example of a well-documented failure of administration in several respects:

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9 Email from Kathy McKillip to Fiscal Office, dated February 29, 2016.
• The Commission director’s dogged refusal to accept that the budget difficulties experienced this fiscal year were her own doing and not, as she continues to maintain in response to the Audit Report, the work of the Legislature.
• An official Deficit Request that was never specifically explained to or discussed with the Commissioners and was not approved by the Commissioners prior to submission.
• A failure by Commission staff to truthfully explain the purpose of the Deficit Request.
• Improper, uncontrolled, and undocumented spending that led to a loss of $452,600 in Aid for the current Fiscal Year.
• The Commission’s failure to adhere to the will of the Legislature in utilizing Aid appropriated to the Commission for specific purposes.
• The Commission’s failure to award $602,000 in grants that are essential for local communities to promote tourist attractions and events.

The Audit Report provides clearer insight into mismanagement that has been hampering the tourism industry for an extended period. The lack of proper management, as well as the lack of truthfulness, professionalism, civility, and cooperation with partners who merely want to help, have led to schisms in the Commission and industry, skepticism by state policymakers and leaders, and further distrust. While the Associations strongly believe the Commission should continue as an independent agency, we fully understand the dissatisfaction that led the Governor to question that autonomy. The only way to restore the public’s trust in the Commission, we believe firmly, is for the cause of the problems to be squarely addressed. A change in staff leadership at the Commission is imperative.

Respectfully,

[Signature]

Andy S. Pollock
For the NETA and NACVB

cc: Sen. Heath Mello and Members of the Appropriations Committee
Governor Pete Ricketts