A CONTRACT FOR THE OPERATION OF A KENO-TYPE LOTTERY ON BEHALF OF THE CITY OF LINCOLN AND THE COUNTY OF LANCASTER ENTERED INTO BY AND BETWEEN THE CITY OF LINCOLN, NEBRASKA AND EHPV LOTTERY SERVICES LLC A NEBRASKA LIMITED LIABILITY COMPANY

THIS CONTRACT is made and entered into this ___ day of _____, 2013, by and between the City of Lincoln, Nebraska, a municipal corporation (hereinafter referred to as "City"), and EHPV Lottery Services LLC, a Nebraska limited liability company (hereinafter referred to as "Operator").

RECITALS

I.

The City, pursuant to an election held on May 12, 1992, and the County of Lancaster, Nebraska (hereinafter referred to as "County"), pursuant to an election held on November 3, 1992, have been authorized, within their respective jurisdictions, to conduct keno lotteries. As authorized by Neb. Rev. Stat. § 9-625 (Reissue 1991), the City and County have entered into an agreement pursuant to the Interlocal Cooperation Act to conduct a joint lottery. As set forth in said Interlocal Agreement, authority to enter into a contract with a keno lottery operator has been delegated to the City.

II.

The City entered into a five-year contract with the predecessor of Operator on March 10, 1993 and on December 4, 1995. The contract has since been extended every five years for an additional five years. On June 11, 2007, the City approved the assignment of the contract from

Lincoln's Big Red Lottery Services Ltd. to Operator. The last contract extension commenced on March 10, 2008 and is set to expire on March 9, 2013.

The City and Operator are now agreeable to entering into a contract extension for an additional five-year term commencing March 10, 2013 to conduct a keno lottery on behalf of the City and the County in compliance with all applicable laws and regulations of the United States, the State of Nebraska, and the City of Lincoln, and are agreeable to the terms, conditions, and requirements which are set forth, or which are incorporated by reference into, this contract.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto do hereby agree as follows:

1. Designation of Operator; Rights and Duties.

(a) The City hereby grants to Operator, and the Operator hereby accepts, the nonexclusive right to operate, personally and directly, on behalf of the City and the County a keno-type lottery within the corporate limits of the City and the territorial jurisdiction of the County, as they exist on the effective date of this contract and as they may from time to time be changed. Such non-exclusive right shall also extend to the corporate limits of any village, city or county with which the City enters into from time to time one or more interlocal agreements for the operation of a joint keno lottery (hereinafter referred to collectively as the "Interlocal Communities"). In operating such lottery, the Operator acknowledges and agrees that it is acting in the capacity of an independent contractor only, and the Operator further acknowledges the City's right to enter into agreements with other operators for the operation of a keno-type lottery.

(b) The Operator agrees that the keno-type lottery to be operated by it will strictly conform to the Operator's proposal as submitted to the City, which is attached hereto, marked as

Attachment "A," and incorporated herein by reference. To the extent that any terms of such proposal and the terms of this contract are inconsistent or in conflict, then the terms of this contract shall control.

(c) The Operator shall strictly comply with and conform to the requirements, provisions, and conditions of the Nebraska County and City Lottery Act (Neb. Rev. Stat. § 9-601 et seq.) and any amendments thereto, together with County and City Lottery regulations as promulgated by the Nebraska Department of Revenue ("County and City Lottery Regulations") and any and all other federal, state, and local laws as may be applicable to Operator's duties and responsibilities under this contract.

2. <u>Facilities</u>.

(a) The Operator is presently authorized to operate one main location and as many satellite locations as it deems appropriate within the corporate limits of the City, within the County but outside the corporate limits of the City, and within the corporate limits of other Interlocal Communities subject to appropriate approval by the City, the County or the other Interlocal Community as the case may be.

The initial main location within the City shall be located at Big Red Keno Sports Bar & Grill, 955 West "O" Street, Lincoln, Nebraska 68528. Any and all additional main locations shall be subject to approval of the City Council of the City as addendums to this contract and must conform to the following requirements:

(1) All main locations at which the keno-type lottery is conducted shall be located within a zoning district authorizing restaurant uses as a permitted use and the building must be at least 150 feet from any residential structure.

(2) Parking shall be available in the ratio of one space for every two seats provided in that portion of the building utilized for keno lottery operations, plus parking for affiliated uses and employees. All required parking shall be provided on the premises or within 300 feet thereof. Notwithstanding the above, in the event that the Operator cannot provide parking in the required amount, the Operator may provide an alternate parking plan for the proposed additional main location describing how the Operator intends to provide adequate parking. Handicapped parking, which need not be in addition to the otherwise required parking, shall be provided and designated as required by the Americans with Disabilities Act of 1990 (42 U.S.C. § 21-101 et seq.) and applicable state and local laws.

(3) All main locations must be in good to excellent condition, modern, with heating, electrical, air conditioning, and plumbing systems of sufficient capacity and in good working order to properly heat, cool, and light the building and parking lot and maintain a comfortable atmosphere. All systems shall be subject to inspection by appropriate inspectors prior to commencement of operations.

(4) The structure shall be in compliance with all applicable state and local building codes and, in particular, shall meet all requirements of the Uniform Fire Code, the State Life Safety Code (NFPA Pamphlet 101), and the Americans with Disabilities Act of 1990.

(b) The Operator shall keep and maintain the premises of all main locations in a neat and clean condition and all systems in full repair at the Operator's own cost and expense.

The Operator shall provide to the City, upon request, information as to maintenance plans for the main locations, and copies of any maintenance agreements or agreements for janitorial services.

(c) The Operator shall own the main locations or have written leases therefor, extending throughout the term of the Lottery Operator Agreement.

(d) Food and Liquor. The Operator must operate a full service restaurant in conjunction with the operation of the keno lottery at the main location or locations, provided that the City Council may, at the request of the Operator, choose to waive this requirement at an additional main location. Additionally, the Operator, or the owner or lessee of each main location site, must be the holder of a Class "C," "I," or Bottle Club license, or be eligible to obtain the same; provided, however, the City makes no guarantee or assurance that a liquor license to allow for the sale of liquor at a proposed keno lottery location will be granted. It shall be the responsibility of the Operator to take all steps necessary to obtain such a license and to keep such a license in effect during the full term of this contract. Loss of the liquor license at the main location, for whatever reason, shall be grounds for the terminating of this contract.

All food and liquor service shall comply with all applicable federal, state, and local laws relating to the sale of food and liquor. It shall be the responsibility of the Operator to obtain all necessary licenses and permits, and to pay all license fees, permit fees, and taxes related thereto.

(e) Relocation. Nothing herein shall be construed to prohibit the Operator from relocating the main location, provided, however, that any new main location must be approved by the City Council and any move to a new main location must be accomplished in such a

fashion as to cause no more than three day's delay or interruption in the conduct of the keno lottery operation, subject to the provisions of paragraph 8 hereof.

(f) Pickle Cards. So long as Operator is the sole lottery operator for the City, Operator shall ensure that all pickle cards sold at all main locations shall be purchased from the Lincoln Parks Foundation, provided that the Lincoln Parks Foundation maintains a Class II pickle card lottery license and otherwise meets all state requirements to sell pickle cards at the main location.

3. <u>Satellite Location; Criteria</u>.

(a) For purposes of this contract, a satellite location shall mean a location where the winning numbers of a keno type lottery are selected at a main location and the satellite location is electronically linked to the main location. All satellite locations must:

(1) Be licensed to sell liquor on the premises, and on-premises liquor sales shall be provided during a majority of the time keno play is offered.

(2) Have sufficient capacity to accommodate persons who may wish to come to the location to observe or play keno, or to engage in all other activities conducted on the premises.

(3) Have sufficient facilities to permit the sale of keno tickets.

(4) Provide a board or other monitor, clearly visible to the players, on which the winning numbers are displayed, to the extent possible, simultaneously with their display at the main location serving the satellite location.

(5) Provide reasonable security for the keno lottery operations and associated activities.

(6) Be in compliance with all applicable state and local building codes and, in particular, shall meet all requirements of the Uniform Fire Code, the State Life Safety Code (NFPA pamphlet 101) and the Americans with Disabilities Act of 1990.

(7) Have no tax delinquencies, tax liens (except real estate tax liens for taxes not yet due and payable), or other tax compliance deficiencies, whether federal, state or local, against the business property or the business. Furthermore, the proposed owner, lessee, or manager of the satellite location must not have been convicted of any charitable gaming violations or gambling violations, under any state or federal law.

(8) Be located within a zoning district authorizing restaurant uses as a permitted use.

(9) Provide parking in the ratio of one space for every two seats plus parking for affiliated uses and employees. All required parking shall be provided on the premises or within 300 feet thereof. Handicapped parking, which need not be in addition to the otherwise required parking, shall be provided and designated as required by the Americans with Disabilities Act of 1990 (42 U.S.C. § 21-101 et seq.) and applicable state and local laws.

The City, within the corporate limits of the City, the County, within the County, but outside the corporate limits of the City, and other Interlocal Communities within their respective corporate or territorial limits, may waive strict application of the above criteria upon request of the Operator or location owner and for good cause shown, subject to approval of the City.

(b) All satellite locations within the corporate limits of the City shall be subject to approval of the City Council, all satellite locations within the County, but outside the corporate limits of the city, shall be subject to the approval of the County Board, and all satellite locations in other Interlocal Communities shall be approved by the governing body of that jurisdiction, and the approval of each such satellite location shall be incorporated into an addendum to this contract, which addendum shall have appended to it a copy of any agreement between the Operator and the proposed satellite location owner or lessee. The operation of keno lottery at such locations must not create any undue impact on the surrounding neighborhood due to noise, congestion, or other circumstances. Any satellite location must offer keno play within six months of City Council, County Board, or other governing body approval, unless such time limit is specifically extended by action of the City Council, County Board, or other governing body, as appropriate.

(c) The owner, lessee, or manager of any satellite location, whether an individual, sole proprietorship, partnership, or corporation, must be of good character and financially responsible, and must be eligible for and obtain a sales outlet location license as required by § 9-642.01 of the Nebraska County and City Lottery Act.

(d) No satellite location may offer keno play within the business location by more than one keno operator. "Keno play" shall include the purchase of keno tickets, the redemption of winning tickets, or the ability to observe the board or monitor displaying winning numbers.

(e) The Operator may charge the owner or lessee of each satellite location a fee for the right to be a satellite location, provided, however, that no fee charged or paid may exceed the reasonable and actual costs of the necessary equipment and installation of the same, and the

maintenance, repairs, financing, taxes, and insurance of any such equipment or failure of the same. The Operator shall not receive any other fee or remuneration from the owner or lessee of the satellite location. The Operator is expressly prohibited from receiving any percentage or portion of any income or other proceeds from sales or other business otherwise conducted on the premises, including food or beverage sales.

(f) Any change in location or number of satellite locations shall be subject to approval by the City Council for the satellite locations within the corporate limits of the City, by the County Board for those satellite locations within the County, but outside the corporate limits of the City, and by the governing body of the Interlocal Community for those satellite locations in other Interlocal Communities.

4. Signage.

The Operator shall, at its own cost and expense, provide adequate signage in accordance with the applicable zoning district regulations for the district in which each main location is situated of such a type and nature as to identify the location as the site of the keno lottery game.

5. Keno Site Security.

(a) The Operator shall provide a security system plan for the main location which shall include detailed plans, drawings, and specifications of the security system outlining in specific detail the system and devices to be used, which plan shall be kept on file in the office of the Chief of Police. The security standards and controls shall comply in all respects to the provisions of the County and City Lottery Regulations (Regulation 35-613.07).

(b) Video and Recording Equipment. Cameras attached to video recorders shall be provided and in full operation prior to, during, and subsequent to the calling of each game in such

locations as will insure coverage of all aspects of the operation in full compliance with the County and City Lottery Regulations. Additionally, security cameras will be provided and in full operation covering the work area including the ticket writer stations. All cameras and related equipment shall be subject to Nebraska Department of Revenue approval. All cameras and other video equipment shall be of commercial quality so that a clear image of the numbers on the balls can be read easily and enable anyone to read the numbers off the balls being selected and the numbers displayed on the keno board or monitor.

(c) Physical Security.

(1) Outer perimeter. The area contained within the outer perimeter of the building housing the main keno game shall have lighting in the parking areas and pedestrian way or sidewalk areas leading to the entrances and to and from the parking lots meeting the following illumination standards:

A. Lighting in all parking lot areas shall be provided at a level between 1.5 and 2 horizontal foot candles average maintained, with a uniformity ratio of not greater than four-to-one (4:1), average to minimum.

B. The lighting level for all sidewalk areas shall be at a minimum level of one horizontal foot candle, average maintained.

(2) Inner perimeter. The building that will house the keno game shall be considered as an inner perimeter. Doors and glass in the structure shall be protected by a state-of-the-art intrusion alarm system.

(3) Operational perimeter. The keno writer station shall be an individual work area separating the keno players and keno writers for each writer location. Access to the interior of the keno writer stations shall be by locked door only. Each writer station shall be equipped with a state-of-the-art silent hold-up alarm button. Cash drawers shall be individually keyed and locked when not in use.

(4) Cash room. The cash room contained within the keno lounge shall be a separately locked room which management uses for the purpose of cash accounting needs. The cash room shall be equipped with an intrusion alarm system or zone within the alarm system that is separate from the outer perimeter alarm. The room shall also be equipped with a hold-up alarm. Cash storage and counting shall be completely out of the eyes of the public. If the management feels that there needs to be visibility from management from the cash room out towards the keno writers and players, then one-way bullet-proof glass shall be utilized.

Within the cash room, there shall be provided sufficient space for City officials or independent auditors to conduct the required audits, as well as any spot audits.

(5) Intrusion alarm. The intrusion alarm systems shall be state-of-the art and sufficiently sophisticated to indicate the zone that an intrusion is occurring in so that the dispatched police units will receive detailed information on the exact location of the intrusion. The operator will utilize the same procedures as do Lincoln financial institutions in conjunction with police response to hold-up alarms.

(6) Computer system. Access to the computer system operating the keno game shall be adequately restricted. The computer system shall be maintained in a separate room provided with its own intrusion alarm system or zone within the alarm system. The computer room shall be locked at all times with access restricted to the keno manager and authorized service personnel. Security shall be provided for the central processing unit which shall include an uninterruptible power supply or acceptable alternative.

(7) Winners of large amounts. Operator shall strictly conform to the provisions of the County and City Lottery Regulations relating to winners of large amounts.

(d) Satellite Security. If satellite locations are proposed, the Operator must include in the security system plan the type of security measures proposed for each satellite location.

6. Ownership of Operator.

Attached hereto, marked as Attachment "B," and made a part hereof by reference, is a full listing of the owners of the Operator. The Operator shall provide to the Finance Director, on an annual basis upon request, current financial statements of the Operator and each person directly or indirectly owning greater than five percent (5%) of the outstanding equity of the Operator or any owner of the Operator. It is the intention of the parties that such financial statements of the Operator and its owners are confidential and proprietary business records and are to be used solely for the purpose of investigating and examining the financial suitability of the Operator to be a lottery operator for the City. The City shall promptly notify the Operator of any request for such financial statements to be disclosed as a public record in order to give the Operator the

opportunity to resist such request if it chooses to do so. Any transfer of any interest in the Operator, or the transfer of five percent (5%) or more of the outstanding equity of any entity holding an interest in the Operator in any one-year period, may be made only with the approval of the City Council.

7. <u>Type of Equipment; Maintenance</u>.

(a) Approval of equipment. The equipment proposed for use in the main keno lottery location or locations must meet the requirements for equipment as established by the Nebraska Department of Revenue for electronic blower type lottery (either manual or automatic as applicable) and be approved by such department. Equipment for satellite locations must be approved by the Nebraska Department of Revenue.

(1) Prior to commencing operation, all equipment and software proposed to be used in the keno operation, and all subsequent upgrades thereof, shall be submitted for inspection, testing, and approval, except for equipment that has previously been approved by the Nebraska Department of Revenue. The City may request that inspections or tests be performed by the Nebraska Department of Revenue, other governmental or law enforcement agencies, or independent testing or auditing firms, which inspections may be in addition to any that may be required to comply with State law.

(2) Inspections or tests may also be conducted at any time during the course of this agreement by the City or its authorized representatives without prior notice.

(3) The City retains the right to reject any equipment or software not meeting City approval which approval shall not be unreasonably withheld. In the event of rejection, the Operator must agree to immediately discontinue use of such equipment or

software and provide sufficient approved equipment and software to perform its duties under the contract.

(4) All security devices and measures set forth in the Operator's security system plan shall likewise be subject to inspection, testing, and approval by the Nebraska Department of Revenue and the City.

(b) Keno Equipment Maintenance. The Operator shall maintain an effective maintenance plan to service keno equipment, including computer program updates, hardware servicing, and keno number selection equipment, which maintenance plan must comply with all the requirements set forth in Regulation 35-614 of the County and City Lottery Regulations. With the exception of routine maintenance, all keno equipment maintenance must be performed by persons other than the Operator and its employees or by a subsidiary or company in which the Operator has any financial interest.

8. <u>Time and Hours of Operation</u>.

The main keno game will be operated Monday through Saturday, between 9:00 a.m. and 2:00 a.m. the following morning and noon to 2:00 a.m. on Sunday. In jurisdictions that have not adopted a 2:00 a.m. closing time for liquor establishments, keno shall not be available after 1:00 a.m. The Operator may, with the approval of the Finance Director, operate the keno lottery starting earlier in the morning, within the hours allowed by the Nebraska County and City Lottery Act.

There shall be no cessation of operations at the main location without the prior written consent of the City, and any cessation of operations without such prior written consent shall cause the Operator to be in default and subject the Operator to liquidated damages or termination

of the contract. Notwithstanding the above, termination or cessation of operation caused by fire, casualty, or equipment failures beyond the control of the Operator, at the keno lottery location shall not cause the Operator to be in default, but a default shall occur unless operations are not commenced again as soon as reasonably practicable after the occurrence of such fire or other casualty.

9. Marketing Plan.

The Operator shall substantially implement the marketing plan set forth in its proposal. Notwithstanding the foregoing, radio and television spots, as part of the marketing plan, shall be utilized only to the extent permissible under federal law.

10. Compensation and Proceeds.

(a) In addition to the awarding of prizes, the Operator shall pay:

(i) all expenses, federal excise taxes, and all other taxes (except for those specifically assumed by the City under subsection (c) hereof),

(ii) license fees imposed under the Nebraska County and City Lottery Act, other than fees specifically for a license for the City, the County, or another Interlocal Community (such as the $100 biennial fee for Form 50G), which shall be paid by the City, County or Interlocal Community, and

(iii) $7,600 annually for performance of state-mandated audit procedures. Payment shall be received by the City within 30 days of the issuance date of the annual audit report. In the event state-mandated audit procedures change during the term of this contract, the annual audit fee will be adjusted to reflect the changes.

(b) The Operator shall insure and pay to the City the following minimum returns on no less than a bi-monthly basis no later than three business days following the 15th and the last day of each month:

Item	Return to City
Keno Gross Proceeds	No less than 14%

The Operator shall pay to the City the following minimum returns by no later than three business days following the 15th of the following month:

Pickle Cards	0.45% of the face amount of pickle cards sold
Other Lottery & Gambling Proceeds (which shall be offered at main locations only by the Operator or not at all)	10% of any compensation or commission paid to or gross proceeds received by Operator
Advertising on Inside and Outside Tickets	10% of gross proceeds

Interest shall accrue on all payments due the City, at the judgment rate of interest established by Nebraska statutes, from the first day that such payment is due until paid.

(c) The City shall be responsible for payment of the two percent (2%) tax on gross proceeds as imposed by Neb. Rev. Stat. §9-648.

(d) The Operator shall be entitled to retain no more than thirteen percent (13%) of the gross proceeds.

(e) All remaining gross proceeds shall be paid out as prizes.

11. Changes in Pay Table Rates.

Operator shall notify the City Finance Department of all pay table rate changes at least ten (10) days prior to implementation of the changes. The City shall notify the Operator whether the proposed pay table rate changes are approved or denied prior to the proposed implementation date.

12. Record Keeping and Auditing.

(a) The Operator shall maintain complete and separate books and records of all activity associated with the operation of said lottery including, but not limited to, all costs and proceeds associated with the lottery, pickle, and concession sales. All books and records must be sufficient to comply with Nebraska Department of Revenue and City and County Lottery Rules and Regulations and shall also be kept in computerized form and capable of being utilized by the City with either dial-up or on-line access and, to the extent practicable, on real time, at the appropriate City office. The Operator shall submit to the Finance Director monthly financial reports for said activities no later than fifteen (15) days following the last day of each month's operations. Said monthly reports shall contain all information necessary to complete any report required by law, rules, or regulations, including information related to proceeds, expenses, taxes, fees, maintenance, and commissions for the month reported. Each report shall be verified as accurate by the proper financial officer of the Operator. The City, by and through either the Mayor or City Council, may, at its option, request that any report be submitted weekly.

(b) City shall have the right, without notice, to review and examine all books and records of Operator required by this contract or by law, including, but not limited to quarterly and

annual audits of Operator's books and records conducted by an independent certified public accounting firm selected by the City Council.

(c) The Operator shall notify the Finance Director within 30 days of Operator's knowledge of the commencement of any civil litigation (other than divorce proceedings) involving any officer or partner of Operator, any shareholder of Operator, or any keno manager. The Operator shall notify the Finance Director within 30 days of Operator's knowledge of the filing of criminal charges against any officer of Operator, any shareholder of Operator, any keno manager, or any employee involving forgery, larceny, extortion, conspiracy to defraud, or any similar offense or offenses or any crime, whether a felony or misdemeanor, involving any gambling activity or moral turpitude.

(d) Operator shall be responsible for all federal, state, and local taxes, licensing and reporting requirements for itself, the City, and lottery winners as provided or permitted by law, rules, or regulations; except, City shall be responsible for payment of any lottery tax imposed upon it by Nebraska State statute, but Operator shall prepare any report therefor, except City reports to be filed with the Nebraska Department of Revenue. Operator shall promptly provide to the Finance Director copies of all reports and notices it submits to any governmental entity.

(e) All gross proceeds of the lottery, except that portion paid out in cash prizes, shall be deposited in a separate bank account maintained at a bank selected by Operator to be approved by the City Finance Director. All expenses and prizes, except cash payouts permitted by law or applicable rules or regulations, shall be paid by check or electronic withdrawal drawn on said bank account. All funds, if any, over and above the thirteen percent (13%) of gross proceeds paid to the Operator, the fourteen percent (14%) of gross proceeds paid to the City each month, and

amounts paid to winning players ("Accumulated Funds"), shall be allowed to accumulate in such account during the continuation of the keno lottery. If at the end of any calendar month the Accumulated Funds exceed $300,000, the Operator shall pay the excess to the City by no later than three business days following the 15th of the following month. Upon expiration or termination of this Agreement for any reason, all Accumulated Funds, if any, shall be paid to the City. All interest on the gross proceeds shall be the property of the City. Additionally, all unclaimed prizes shall be the property of and paid to the City by no later than three business days following the 15th of the month following the month in which the ticket went unclaimed. Prizes shall be considered "unclaimed" if not collected by the owner within one (1) business day following the date on which the prize was won, provided that Operator may allow up to one year for players to claim prizes on tickets written for 21 or more games or on winners of large amounts as defined by County and City Lottery Regulations. Upon presentation of valid documentation, the Operator may pay a ticket previously categorized or paid to the City as unclaimed, and reduce amounts due to the City accordingly.

(f) Operator shall provide a daily unclaimed ticket report as well as a daily ticket report to the City with a detailed record of all ticket conditioning and of each winning ticket and amount. The Operator shall also provide a monthly report containing the name and address of each player with net winnings of $1,500 or more. The monthly ticket report shall be provided within 15 days following the last day of each month's operations.

13. <u>Bonds, Insurance, and Indemnification</u>.

(a) Bonds. The Operator shall provide a performance and payment bond issued by a corporate surety company authorized to do business in the State of Nebraska in the penal sum of

$250,000 conditioned upon the Operator's full and complete performance of its contractual obligations and the payment of all sums due the City under said contract. Operator shall be required to maintain such bond during the term of the contract. In lieu of said bond, Operator may provide an irrevocable letter of credit issued by a local bank or other financial institution in the required amount and subject to the same conditions. The form of the letter of credit and the institution upon which it is drawn must be approved by the City.

(b) Insurance.

(1) The Operator shall be required, at all times, to maintain insurance with an insurance company authorized to do business in the State of Nebraska and acceptable to the City covering general liability in the amount of $2,000,000 per person and $5,000,000 per occurrence for bodily injury and $500,000 for property damage, and shall provide for assumed contractual liability coverage notwithstanding that the City may be an additional named insured.

(2) Operator shall provide evidence of fire and casualty insurance in an amount equal to the replacement value of the structure and contents of the keno lottery location. Such insurance must also include coverage for loss of revenue.

(3) The Operator shall provide employee theft coverage in the amount of $500,000.

(4) The Operator shall maintain coverage for workers' compensation as required by state law.

(5) All such insurance shall be provided by an insurance company authorized to do business in the State of Nebraska and shall be evidenced by a copy of the policy or

an ACORD certificate of insurance. Said insurance shall contain a noncancellation provision requiring thirty (30) days' notice to the city prior to cancellation of coverage and failure to maintain insurance as required shall constitute a breach of contract. The City shall be an additional insured on all insurance required except workers' compensation coverage.

(c) Indemnification. The Operator shall bear sole responsibility and shall hold harmless and indemnify the City from all claims by third parties, including all sums reasonably expended for attorney's fees in the defense of any claim or loss arising from the operation of or failure to operate the keno lottery. Such claims shall include, but shall not be limited to, claims regarding the ownership, selection, possession, use, leasing, renting, operation, control, maintenance, delivery, and installation of equipment provided by the Operator. Operator further agrees to hold harmless and indemnify the City for any and all loss, damage, injury, or claims of third parties arising out of or resulting from the conduct of the lottery, including, but not limited to, bodily injury to third persons or damage to property, financial loss by reason of entitlement to or settlement of prizes exceeding net proceeds, failure to honor or pay prize claim, failure by Operator or its employees and agents to comply with the terms of the contract with the City, and all injury or damages that may result from any operations or services rendered under the terms and conditions of the agreement whether or not resulting from a negligent act or omission of the Operator.

14. <u>Prizes and Cash Reserve</u>.

The Operator shall bear full responsibility and liability for any and all valid prizes in the operation of the lottery and shall be solely responsible for honoring and paying all prize claims.

Operator shall pay all prizes in the manner and at the time required by this agreement or applicable law, rule, or regulation. As primary security for Operator's performance of this obligation, Operator shall, prior to commencing operation, deposit with the City a cash reserve in an amount two times the amount of the maximum prize that is possible to be won in any regular game. In the event the Operator proposes to offer a progressive keno game or other special promotional game with a prize exceeding the maximum possible prize in a regular game, the amount of the cash reserve shall be negotiated between the Operator and the City.

The City, by and through the Finance Director, shall have the right to withdraw amounts from the reserve or security in the event the Operator fails for any reason to pay all claims or prizes. Operator shall maintain and replenish the cash reserve or security as necessary to maintain the required reserve. After any drawing upon the reserve security, Operator shall replenish the reserve to the required amount before conducting any keno game. The City shall bear no responsibility or liability whatsoever for any prize claims and the cash reserve or security is to be maintained solely for the purpose of ensuring a fair and honest lottery and to assure the financial responsibility of the Operator.

Said cash reserve shall be deposited by City in a separate FDIC insured bank account which shall be interest bearing, the interest of which shall be credited to the reserve balance. The City alone shall have authority to withdraw funds from such account and shall pay interest earned to the Operator on a quarterly basis as long as the proper reserve balance is maintained. The cash reserve for security shall be returned to the Operator after all prizes and claims have been paid and settled at the termination of this contract.

In lieu of depositing cash, the Operator may provide to the City an irrevocable letter of credit in the required amount issued by a financial institution approved by the City.

15. Sales Tax.

The Operator understands that purchases by the Operator are not exempt from the payment of sales or use taxes.

16. Training of Employees; "Drug Free" Workplace.

(a) The Operator will provide to each employee who is engaged in the operation of the keno lottery the type and amount of training as described in its proposal, and further understands and agrees that each employee shall be subject to a complete and thorough background investigation and criminal history check prior to and throughout the term of their employment. Such investigation may be conducted by any governmental agency designated by the City or by the Operator and approved by the Finance Director. The Operator shall not hire or shall dismiss an employee who has been, or at any time during the term of this contract, convicted of, forfeits bond upon a charge of, or pleads guilty to forgery, larceny, extortion, conspiracy to defraud, or any similar offense or offenses or any crime, whether a felony or misdemeanor involving any gambling activity or moral turpitude.

(b) The Operator shall permit City personnel to attend all training sessions involving Operator's auditors or bookkeepers, and shall notify the Finance Director of each upcoming session involving such training.

(c) The Operator shall establish a "drug free" workplace plan which specifies that no alcohol or illegal substances will be used by employees during work hours.

17. Liquidated Damages.

The parties agree that actual damages for breach of this contract by the Operator would be difficult to accurately ascertain, but agree that the following are reasonable approximations: The City shall be entitled, for any breach not involving a failure to open or operate the keno lottery, to $500 per day for each day that the breach continues, and for any breach involving failure to operate in any main location, or to remain open on all days and hours required, $6,000 per day for each day that the violation continues with said sum to be proportionate in the event that the breach does not involve full days.

The City may draw upon the letter of credit or demand payment from the Operator's corporate surety in the event that Operator fails to make payment of such liquidated damages upon demand by the City.

18. Default.

The City may terminate this contract in the event the Operator commits a material breach. A material breach shall include, but not be limited to, the following:

(a) Insolvency of the Operator;

(b) The filing of a petition of bankruptcy for the protection, under Chapters 7, 11, or 13 of the Bankruptcy Code, of the Operator, any shareholder of Operator owning greater than five percent (5%) of the outstanding equity of Operator, or any shareholder of Operator owning greater than five percent (5%) of the outstanding equity of any corporation which holds an interest in the Operator;

(c) The conviction of Operator, any officer, director, or employee of Operator, or any shareholder owning greater than five percent (5%) of the outstanding equity of Operator, or any

shareholder owning greater than five percent (5%) of the outstanding equity of any corporation having an interest in the Operator, of a felony relating to honesty or trustworthiness in performance of this contract or in the performance of any other lottery or gambling operation. Convictions of other crimes involving moral turpitude or of such a nature as, in the opinion of the City, may in any way adversely reflect upon the lottery operation or the City, or in any way give the appearance of impropriety shall give the City, by and through either the Mayor or City Council, the right to request the removal of any such person. Failure to honor said request will constitute a breach of this contract;

(d) The failure to comply with any federal, state, or local law or rules or regulations;

(e) The failure to commence operation as required by this contract or the interruption or cessation of operations at any main keno lottery location as required by this contract without written approval from the City;

(f) The failure to provide material information, the furnishing of false information, or the omission of material information as required to be disclosed by Operator under this contract or as included in the Operator's proposal;

(g) The failure to pay prizes as required by law or this contract;

(h) The failure to pay City the agreed upon percentages of proceeds;

(i) The cancellation or revocation of the Operator's liquor license at its main location(s) for any reason whatsoever;

(j) The failure to obtain or maintain required insurance coverage;

(k) The failure to obtain or maintain the required performance bond or letter of credit;

(l) The transfer of an ownership interest in Operator or an assignment of this contract in violation of this contract;

(m) Any attempt to evade any material provision of this contract or practice any fraud or deceit upon the City or Operator's customers;

(n) The failure to cooperate with: the certified public accountant performing the audit functions provided for by this contract; the Finance Department; the Lincoln Police Department; the City Council; the officials of the State of Nebraska; or any other public authority empowered to monitor or enforce this contract or laws regarding lottery operations.

19. <u>Equal Employment and Affirmative Action</u>.

Pursuant to § 11.08.160 of the Lincoln Municipal Code, Operator shall not discriminate against any employee or applicant for employment to be employed in the performance of this contract with respect to hire, tenure, terms, conditions, or privileges of employment because of race, color, religion, sex, disability, national origin, ancestry, age, or marital status. Furthermore, in compliance with Executive Order No. 38000, the Operator shall submit an affirmative action program to the City for approval.

20. <u>Conflict of Interest; Prohibited</u>.

(a) No member of the County Board of the County, no member of the City Council of the City, or the Mayor or any governing official of the County, City or any Interlocal Community shall have a substantial interest in the Operator. For purposes of this section, a governing official shall include the chief executive officer of the City, the County, or any Interlocal Community, or any other elected or appointed official who has any decision making responsibility regarding the conduct and operation of the keno lottery.

For purposes of this section, the definition of "substantial interest" shall be that as stated in Regulation 35-600.02RR of the County and City Lottery Regulations. A violation of this section with the knowledge of the Operator, in addition to constituting malfeasance on the part of the governing official, shall be cause for the City to unilaterally terminate this contract.

(b) The Operator and any person having an ownership interest in the Operator or the immediate family members of any officer, director, or shareholder of the Operator shall be prohibited from playing or participating in any way in the keno lottery activity authorized hereunder. For purposes of this section, "immediate family" shall mean and include spouse, children, grandchildren, brother, sister, parents, father-in-law, or mother-in-law. Employees and agents of the Operator shall be prohibited from playing or participating in the keno lottery activities at the main location.

21. <u>Term and Termination</u>.

(a) Term. The term of this contract shall begin on March 10, 2013 and shall expire on March 9, 2018, unless earlier terminated as hereinafter provided.

(b) Termination. In addition to any other remedies provided in this contract, or any other remedies available to the City at law or in equity, if the Operator breaches any of the terms of this contract, or is otherwise in default of this contract, the City, by and through the Mayor, may give written notice to the Operator that if the Operator fails to cure such breach or default within seven business days after notice is received, then this contract shall be terminated. The Mayor may, however, and without any obligation whatsoever to do so, extend the period within which to allow the Operator to cure any such breach or default. In the event that the Operator fails to cure any such breach or default within the required time, then this contract shall

automatically terminate, it being expressly understood and agreed that no further action need be taken by the City to terminate this contract and, further, that the Operator hereby expressly waives any further notice of termination.

In the event that this contract is terminated by the Mayor, then the Operator shall have the right to appeal such termination to the City Council by filing, within 30 days of the effective date of said termination, a notice of appeal with the City Clerk. The City Council shall hear and consider the issue and shall determine, subject to effective veto by the Mayor, whether the contract shall be terminated. During the 30-day period within which to file its notice of appeal and the pendency of any such appeal, the Operator may, at its option, continue to operate the keno lottery in full compliance with and subject to the terms, provisions, and conditions of this contract.

Upon termination, all remaining gross proceeds shall be divided in accordance with the percentages set forth in Section 10 above. Any prize reserve balance shall be the property of the City.

(c) Notwithstanding the above, if (i) the voters of the County, or any Interlocal Community, vote to discontinue the keno lottery authorized hereunder by an election authorized under *Neb. Rev. Stat.* § 9-626 or 9-627, then and in that event, the Operator shall cease operations within the County or such Interlocal Community as applicable upon receipt of 30 days notice to discontinue such operations; (ii) in the event that the voters of the City vote to discontinue this keno lottery by an election authorized under *Neb. Rev. Stat.* § 9-616 or 9-617, then and in that event, this contract may be terminated by the City giving 30 days notice of termination to the Operator.

22. Waiver and Severability.

Failure of the City upon any one or more occasions to insist upon or seek compliance with any condition or provision of this contract shall not be deemed to be a waiver of compliance with any similar or dissimilar provisions or conditions.

Any invalidity or unenforceability of any provision of this contract shall not affect the validity or enforceability of any other provision of this contract, nor shall the invalidity or unenforceability of a portion of any provision of this contract affect the validity and enforceability of the balance of such provision. All other provisions and parts of provisions shall remain in full force and effect, provided, however, if in the sole opinion of the City, the removal or inoperative effect of any such provision or part of provision so declared invalid or unenforceable shall materially affect the City's rights hereunder, the City may terminate this contract.

23. Time of the Essence.

Whenever this contract shall set forth any time for any action to be performed by or on behalf of the Operator, such time shall be deemed to be of the essence and any failure of the Operator to perform within the time allotted shall always be sufficient grounds for the City to terminate this contract.

24. Construction and Definitions.

(a) This contract incorporates and integrates all terms and conditions of all documents and laws mentioned herein or incidental hereto and constitutes the entire contract between the parties hereto superseding any prior agreement or understanding, whether oral or written, express

or implied. This contract may not be discharged or modified except as provided herein or permitted by law.

(b) Definitions.

(1) For purposes of this contract, the term "gross proceeds" shall mean the total aggregate receipts received from the conduct of the keno lottery authorized hereunder without any reduction for prizes, discounts, taxes, or expenses and shall include receipts from admission costs, any consideration necessary for participation, and the value of any free tickets, games, or plays used.

(2) For purposes of this contract, the term "pickle cards" shall mean a type of device governed by the Nebraska Pickle Card Lottery Act (Neb. Rev. Stat. § 9-301 et seq.).

25. Amendments.

This contract may be amended only by written amendment approved by authorized officials of the Operator and by the City Council of the City. Any and all such amendments or modifications to this contract shall be binding upon the Operator's surety without notice to the surety.

26. Assignability.

The parties agree that all rights and obligations created or imposed by this contract are personal to the parties and that neither this contract nor any of the rights or obligations hereunder may be assigned, delegated, transferred, or subcontracted by the Operator without the prior express written consent of the City.

27. Keno Administrator.

The Finance Director shall be responsible for the continued administration of this contract. The Operator hereby agrees to work with and support the decisions of the Finance Director in administering this contract.

28. Notices.

Notices, for any and all purposes hereunder, including service of process, shall be deemed to be sufficient if sent by certified or registered mail, postage prepaid, addressed as follows:

(a)	To the City:	Finance Director City of Lincoln 555 South 10th Street Lincoln, Nebr. 68508
(b)	To the Operator:	EHPV Lottery Services LLC c/o Gary Vander Woude Chief Financial Officer 11248 John Galt Blvd. Omaha, Nebr. 68137

The parties may designate a different person or address by providing written notice of such change to the other party.

29. Renewal.

The City has determined this to be a professional service contract. The Parties may mutually agree to renew this contract for one or more additional terms not to exceed five years each. Such renewal shall be effected by passage of a resolution by the City Council.

30. Applicable Law.

This contract shall be governed by and construed in accordance with the laws of the State of Nebraska. Any legal action to enforce or declare any rights or obligations created or imposed by this contract shall be commenced in a court of the State of Nebraska in Lancaster County.

31. <u>E-Verify</u>.

In accordance with *Neb. Rev. Stat.* §4-108 through §4-114, the Operator agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 USC 1324 a, otherwise 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. The Operator shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A. 1324b. The Operator shall require any subcontractor to comply with the provisions of this section.

IN WITNESS WHEREOF, the parties have executed this contract as of the day and year first written above.

ATTEST:

THE CITY OF LINCOLN, NEBRASKA,
a municipal corporation,

By: _____

City Clerk

Mayor

WITNESS:

Wm. T. Harvey
General Counsel

EHPV LOTTERY SERVICES LLC,
a Nebraska limited liability company

By: _____

Daniel G. Pankow, President and CEO