

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
APRIL 5, 2016 AGENDA**

Subject:	Type:	Submitted By:
KENO OPERATOR AGREEMENT ASSIGNMENT	◆ RESOLUTION ORDINANCE RECEIVE/FILE	KEVIN POKORNY, DIRECTOR OF ADMINISTRATIVE SERVICES

SYNOPSIS

A resolution has been prepared to approve the assignment and assumption of the Lottery Operator Agreement between the City and La Vista Keno, Inc.

FISCAL IMPACT

Total Annual Gross (handle): \$7 million minimum increased to \$10 million, with potential for City net payout to increase if the handle exceeds the required minimum.

RECOMMENDATION

Approval.

BACKGROUND

The City and La Vista Keno, Inc. have an ongoing Lottery Operator Agreement in effect dated August 8, 2008. Richard T. Bellino, the sole owner of the shares of La Vista Keno, Inc., unexpectedly passed away on July 31, 2015. Mary Kay Bellino, personal representative of Richard T. Bellino's Estate and current owner of La Vista Keno, Inc, advises that she entered an agreement to sell all keno and related operations and assets, and in connection with that sale has requested City approval of the assignment and assumption of the current Lottery Operator Agreement to and by buyer, LVK Holdings LLC ("Buyer"). A proposed Assignment and Assumption Agreement is presented with this agenda item. Under it, the Buyer would assume the current Lottery Operator Agreement and continue operating the City's keno lottery game in accordance with that Agreement and any applicable conditions of the Assignment and Assumption Agreement. The Buyer intends to continue operating the City's keno lottery, Swizzle Stix, Jimbo's Diner, and other food and beverage services at the same locations and in essentially the same manner as operated by the Bellinos and La Vista Keno, Inc.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA APPROVING AN ASSIGNMENT AND ASSUMPTION AGREEMENT WITH RESPECT TO KENO LOTTERY OPERATOR AGREEMENT.

WHEREAS, a majority of the vote by the registered voters of the City of La Vista in 1989 was cast in favor of authorizing the establishment of a municipal lottery; and

WHEREAS, the Mayor and City Council established a keno-type lottery and awarded successive contracts to operate said lottery, the current of which is the Lottery Operator Agreement between the City and La Vista Keno, Inc. ("Current Operator"), dated August 8, 2008, as amended by Amendment Nos. 1 and 2, ("Lottery Operator Agreement"); and

WHEREAS, Richard T. Bellino, the sole owner of the shares of Current Operator unexpectedly passed away on July 31, 2015; and

WHEREAS, Mary Kay Bellino, as personal representative of the Estate of Richard T. Bellino and successor to the shares of Current Operator, advised the City that she has entered an agreement to sell the Current Operator's keno operations and all related real estate and other assets and operations; and in connection with said sale, has requested City approval of the assignment and assumption of the current Lottery Operator Agreement to and by the buyer, LVK Holdings LLC ("Buyer").

WHEREAS, the Buyer intends to maintain the status quo after the sale and continue keno and related operations at the same headquarters at 7101 South 84th Street and satellite locations in substantially the same manner as conducted by the Current Operator.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of La Vista, Nebraska, that the Assignment and Assumption Agreement as presented at this meeting is hereby approved and the Mayor and City Clerk are hereby authorized to execute said Assignment and Assumption Agreement on behalf of the City of La Vista, subject to any additions or changes as the City Administrator determines necessary or advisable.

BE IT FURTHER RESOLVED that the Mayor or City Administrator or his or her designee shall be authorized to take all further actions on behalf of the City as he or she determines necessary or appropriate to implement and carry out the Assignment and Assumption Agreement.

PASSED AND APPROVED THIS 5TH DAY OF APRIL, 2016.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Bueth, CMC
City Clerk

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Assignment") is entered into by and among La Vista Keno, Inc., a Nebraska corporation ("Current Contractor"), Mary Kay Bellino, an individual, the City of La Vista, Sarpy County, Nebraska, a municipal corporation ("City"), LVK Holdings LLC, a Nebraska limited liability company, ("LVK" or "Assignee"), and EHPV Lottery Services LLC, a Nebraska limited liability company and owner of a controlling interest of the membership interests of LVK ("Holding Company"), effective as of May 1, 2016 or such other date as agreed in writing by the City Administrator, Current Contractor and LVK (the "Effective Date").

WHEREAS, a majority of the vote by the registered voters of the City of La Vista in 1989 was cast in favor of authorizing the establishment of a municipal lottery; and

WHEREAS, the Mayor and City Council established a keno-type lottery ("La Vista Keno") and awarded successive contracts to operate said lottery, the current of which is the Lottery Operator Agreement between City and Current Contractor dated August 8, 2008, as amended by Amendment Nos. 1 and 2, ("Lottery Operator Agreement" or "Agreement"); and

WHEREAS, Richard T. Bellino, the sole owner of the shares of Current Contractor unexpectedly passed away on July 31, 2015; and

WHEREAS, Mary Kay Bellino is personal representative of the Estate of Richard T. Bellino and in that capacity owns all shares of Current Contractor and Swizzle Stix Lounge, Inc. ("Swizzle Stix Lounge"). Mary Kay Bellino individually owns all equity interests of one or more entities ("Bellino Related Company") that own assets, rights and interests used in or connected with the keno operations or food, beverage or other operations conducted in conjunction with the keno operations or otherwise at or from the same premises, including without limitation the real estate, building and other improvements at which 7101 South 84th Street is located ("Real Estate") and from which Current Contractor operates La Vista Keno and related food and beverage services. Mary Kay Bellino advised the City that as personal representative on behalf of Current Contractor and Swizzle Stix Lounge, and individually and on behalf of the Bellino Related Company, has agreed to sell to LVK the Current Contractor's keno operations, and to one or more affiliated entities of LVK and Holding Company all Real Estate, facilities, records, rights, supplies, equipment and other assets used in or connected with said keno operations or food, beverage or other operations of Current Contractor, Swizzle Stix Lounge, or the Bellino Related Company; and in connection with said sale requested approval of the assignment and assumption of the Lottery Operator Agreement to and by LVK, and

WHEREAS, Assignee has represented to the City that it intends to continue keno and related operations in and from the same headquarters location at 7101 South 84th Street and satellite locations and in and at substantially the same manner and quality as conducted by the Current Contractor, and

WHEREAS, EHPV Management Group Inc, EHPV Operating Group LLC, and EHPV Real Estate Group LLC and their respective subsidiaries are under common ownership and control with LVK and Holding Company and on and after the Effective Date may own, manage, operate, or control the Real Estate or other property, assets, rights, or activities connected with La Vista Keno or food, beverage or other operations conducted in conjunction with La Vista Keno or

otherwise by Current Contractor, Swizzle Stix Lounge, or Bellino Related Company ("Affiliated Entities").

NOW, THEREFORE, the parties agree as follows:

1. Current Contractor Assignment.

- a. La Vista Keno, Inc. hereby assigns all rights, title, and interests in, to and under the Lottery Operator Agreement to Assignee effective as of the Effective Date, subject to satisfaction of the conditions set forth in Section 3 of this Assignment.
- b. La Vista Keno, Inc. shall continue to be bound by and fully perform the Lottery Operator Agreement and all requirements thereunder arising prior to the Effective Date.
- c. On and after the Effective Date, La Vista Keno, Inc., and Mary Kay Bellino, individually, shall continue to be bound by the prohibition on competition set forth in Section 18 of said Lottery Operator Agreement as said Section existed before the modifications made in Section 3 of this Assignment.

2. Acceptance of Assignment and Assumption.

- a. LVK Holdings LLC hereby accepts the assignment provided in Section 1 above and assumes said Lottery Operator Agreement and performance thereof as of the Effective Date in accordance with the terms and conditions of said Lottery Operator Agreement, this Assignment, and applicable laws, regulations and other requirements, subject to satisfaction of the conditions set forth in Section 3 below. Assignee shall fully perform the Lottery Operator Agreement, as amended by this Assignment, on and after the Effective Date.

3. City Approval of Assignment. City hereby approves the assignment provided in Section 1, and acceptance and assumption in Section 2, above effective as of the Effective Date, subject to the following conditions:

- a. Assignee on and after the Effective Date will continue the City's keno and related operations in and from the same headquarters location at 7101 South 84th Street and satellite locations substantially in and at the same manner and quality as conducted by the Current Contractor.
- b. Assignee on and after the Effective Date will continue to operate and market the City's keno game solely as "La Vista Keno," and related food and beverage operations as "Swizzle Stix Lounge" and "Jimbo's Diner," and any other names shall not be referenced or used. Not in limitation of the foregoing sentence, the requirement to use "La Vista Keno" shall apply to the primary keno location and all satellites or other locations, venues, methods of delivery, equipment, and supplies of or used in connection with the City's keno game. Any proposed changes with respect to matters described in subsection "3a" or "3b" shall require prior approval of the Mayor and City Council in writing.

- c. Current Contractor, Assignee and Holding Company shall file this Assignment with the Gaming Division of the Nebraska Department of Revenue prior to the Effective Date and obtain all required approvals.
- d. Progressive set aside amounts required by the Agreement to be on deposit with the City shall remain on deposit with the City after this Assignment is executed and through, on and after closing and the Effective Date.
- e. Assignee shall provide certificates of insurance required by the Agreement, which insurance shall be and continue in effect on and after the Effective Date.
- f. Assignee, prior to the Effective Date or as otherwise specified by the City Administrator, shall provide a letter of credit in the amount of \$500,000.00, from a financial institution and in form and content satisfactory to the City Administrator, to secure Assignee's performance under the Agreement, as amended by this Assignment ("Letter of Credit"). Not in limitation of the foregoing sentence, said Letter of Credit shall be provided in place of the bonds, cash deposits and reserves required by Sections 15 and 17(a) of the Agreement. The Letter of Credit shall be and remain continuously in effect at all times on and after the Effective Date. Either Assignee or City may propose an adjustment of the amount of the Letter of Credit at any time more than two years after the Effective Date, with any such adjustment subject to the mutual written consent of the City and Assignee, which consent may be withheld by either party in its sole discretion.
- g. The last sentence of Section 18 of the Agreement shall be deleted and replaced in its entirety by the following, effective on and after the Effective Date: "Finally, the City shall have the option to terminate this Agreement if Contractor or any officer, director, partner, member or manager of Contractor, or any shareholder owning greater than five percent (5%) of the equity of Contractor, at any time during this Agreement directly or indirectly operates, helps to operate, has any interest in, or provides any funds or financing to or for any other lottery or pickle card sales or other game of chance within a five (5) mile radius of the lottery location provided for herein, or to or for the owner or operator of any such lottery, pickle card sales or other game of chance. This Section 18 shall not apply to involvement in any keno lottery or pickle card sales that are located in (i) unincorporated areas of Douglas County, or (ii) the City of Omaha."
- h. The Proposal submitted with the City by the Assignee shall be incorporated into the Lottery Operator Agreement, except for the draft Assignment and Assumption Agreement submitted with the Proposal or as otherwise provided in the Lottery Operator Agreement or this Assignment.
- i. The Lottery Operator Agreement as assigned shall continue for the remainder of the current term and the additional five year term ending September 30, 2023, without any additional action required of, or any option of nonrenewal being available to, either party.
- j. Provisions of the Lottery Operator Agreement, as amended by this Assignment, referring to any shareholder of Contractor, with the exception of Section 21, also

shall include any owner of the Contractor, or any member, shareholder, partner, officer, director or manager of any such owner.

- k. Any subsequent direct or indirect transfer or assignment of any rights, interests, or obligations of the Agreement, as amended by this Assignment, any voting or ownership interests in Assignee, or actual or effective control of Assignee or Holding Company, shall require prior written approval of the Mayor and City Council.
- l. This Assignment shall constitute an amendment of the Lottery Operator Agreement. Assignee, as a condition of this Assignment, shall assume and fully perform the Lottery Operator Agreement, as amended, in accordance with all applicable laws, regulations and requirements. Except as expressly modified by this Assignment, the Lottery Operator Agreement, as amended, shall continue and remain in full force and effect in accordance with the terms and conditions set forth therein.
- m. The City, subject to Current Contractor and LVK closing the asset sale and related transactions in accordance with the conditions above, hereby releases Current Contractor from performance and obligations under the Lottery Operator Agreement arising after the Effective Date, except as provided in Section 1c above.
- n. The Affiliated Entities Agreement below shall be executed before the Effective Date. Said Affiliated Entities Agreement, and the recitals at the beginning of this Assignment, are incorporated into this Assignment by reference.
- o. Section 10 of the Agreement shall be modified, effective as of the Effective Date, as follows: "Ten Million Dollars" shall replace "Seven Million Dollars", "\$10,000,000.00" shall replace "\$7,000,000.00", and "\$10,000,000" shall replace "\$7,000,000" throughout said section.

4. Holding Company.

- a. EHPV Lottery Services LLC agrees to take any actions, including without limitation voting any membership or other ownership interests of EHPV Lottery Services LLC in any subsidiary, as necessary or appropriate to carry out the terms and conditions of the Lottery Operator Agreement as assigned and assumed with respect to any real property or other assets, operations, activities, interests, or matters now or hereafter under the ownership, direction, or control of EHPV Lottery Services LLC or any subsidiary under its ownership, direction or control that are connected with La Vista Keno operations or food, beverage or other operations conducted in conjunction with La Vista Keno or at or from the same premises.
- b. EHPV Lottery Services LLC hereby guarantees full performance and all debts and obligations of Assignee arising out of or resulting from the Lottery Operator Agreement between Assignee and the City, as modified by Amendment No. 1, Amendment No. 2, and this Assignment, and further agrees to hold the City harmless from, and indemnify it against, any and all claims, liabilities, losses, suits, judgments and expenses whatsoever (including, but not limited to, attorneys fees and court costs) arising out of or resulting from any breach, negligence, act or omission of, arising out of or resulting from said Lottery Operator Agreement, as

amended. The guaranty in this subsection "b" shall satisfy the personal guaranty required by Section 21 of the Agreement.

Terms used in this Assignment shall have the meaning set forth in the Agreement, except as otherwise specified in this Assignment. Each party executing this Assignment represents and warrants that, with the exception of any required regulatory approvals, all actions required of said party, or any entity over which said party exercises control, to enter and perform this Assignment and related matters have been authorized and approved, and further that he or she is authorized to execute this Assignment in the capacity indicated below.

Executed as of the Effective Date specified above.

La Vista Keno, Inc., a Nebraska corporation

ATTEST:

Witness

By: _____
Mary Kay Bellino, President

DATE: _____

DATE: _____

ATTEST:

Witness

Mary Kay Bellino, individually, and as
Personal Representative of the Estate of
Richard T. Bellino, Sole Shareholder of La
Vista Keno, Inc. and Swizzle Stix Lounge,
Inc.

DATE: _____

DATE: _____

ATTEST:

LVK Holdings LLC, a Nebraska limited liability
company

Witness

By: _____
Its: _____

DATE: _____

DATE: _____

ATTEST:

City of La Vista, Nebraska, a Nebraska
municipal corporation

City Clerk

By: _____
Mayor

DATE: _____

DATE: _____

ATTEST:

EHPV Lottery Services LLC, a Nebraska limited liability company

Witness

By: _____

Its: _____

DATE: _____

DATE: _____

Affiliated Entities Agreement

By signing below, (i) the undersigned each hereby represents and warrants that he or she is authorized to execute this Affiliated Entities Agreement on behalf of EHPV Management Group Inc, EHPV Operating Group LLC, or EHPV Real Estate Group LLC, as the case may be (each referred to as "company"), and (ii) the undersigned on behalf of said company hereby agrees to take any actions, including without limitation voting any membership or other ownership interests of the company in any subsidiary, as necessary or appropriate to carry out the terms and conditions of the Lottery Operator Agreement as assigned and assumed above with respect to any real property or other assets, operations, activities, interests, or matters now or hereafter under the ownership, direction, or control of said company or any subsidiary of company that are connected with La Vista Keno operations or food, beverage or other operations conducted in conjunction with La Vista Keno or at or from the same premises.

EHPV Management Group Inc, a
Colorado corporation authorized to do business in
Nebraska

ATTEST:

Witness

By: _____

Its: _____

DATE: _____

DATE: _____

ATTEST:

EHPV Operating Group LLC, a Nebraska limited liability company

Witness

By: _____

Its: _____

DATE: _____

DATE: _____

ATTEST:

EHPV Real Estate Group LLC, a Nebraska limited liability company

Witness

By: _____

Its: _____

DATE: _____

DATE: _____