

AGENDA FOR THE REGULAR MEETING OF  
THE MAYOR AND CITY COUNCIL OF THE  
CITY OF AUBURN, NEMAHA COUNTY,  
NEBRASKA, TO BE HELD AT 7:00 P.M.  
APRIL 9, 2012

1. **PLEDGE OF ALLEGIANCE**
2. **ANNOUNCE** – “I am required by law to inform the public that a copy of the Open Meetings Act is posted on the North wall of these Chambers by the entrance door.”
3. **ROLL CALL**
4. **RECOGNITION OF VISITORS\***  
\*The Mayor may fix the time allotted for each individual or topic. A five-minute limit will apply for each speaker, unless otherwise specified. Speakers are expected to address the Council when making presentations. Speakers who feel a need to give more information than can be presented in that time frame may submit written material for distribution to City Hall; such materials should be provided so they may be included in the Council meeting packets.  
  
The Council may make and enforce reasonable rules and regulations regarding the conduct of persons attending its meetings and regarding their privilege to speak. The Council is not required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings.
5. **APPOINTMENT** – City Council Member 1<sup>st</sup> Ward.
6. **ELECT** Council President.
7. **APPROVAL OF MINUTES OF PREVIOUS MEETING(S).**
8. **APPROVAL OF FINANCIAL REPORT.**
9. **CLAIMS.**
10. **APPROVAL** for Attendance at Meeting(s).
11. **PROCLAMATION** – Arbor Day (April 27<sup>th</sup>).
12. **APPOINTMENTS** –
  - Fire Department Member
  - Budget/Finance Committee
  - Ordinance Committee
13. **DON WRIGHT** – Regarding speed limit signs and slow children playing signs on M street from Hwy 136 to 18<sup>th</sup> Street.
14. **PRESENTATION** – Alan Jackson-Peru State College Marketing Professor.
15. **DISCUSSION** – Re: BPW to notify Planning Commission of any requests for services outside city limits.

16. **MOTION** to accept bid for 2012 Street Improvements Asphaltic Concrete Overlay project.
17. **RESOLUTION** – Accept a proposal for Infill Housing.
18. **ORDINANCE** – Accept bid and confirm sale of Lots (Lots 9, 10, 11, and 12; Block 29; Sheridan Addition).
19. **ORDINANCE** – Accept bid and confirm sale of Lots (Lots 106 and 107; Crestview Addition)
20. **RESOLUTION** to approve use of Community Development Block Grant Commercial Rehab Funding as suggested by the Revitalization Review Committee – **Authorize** mayor to sign MOUs (Auburn 10-DTR-105).
21. **DRAWDOWN #25** – Administration related costs only – CDBG #09-HO-6047 (Citywide Owner-Occupied Housing Rehabilitation) and related claims.
22. **DRAWDOWN #26** – Project related costs only – CDBG #09-HO-6047 (Citywide Owner-Occupied Housing Rehabilitation) and related claims.
23. **RESOLUTION** – Close the highways for the parade(s).
24. **RESOLUTION** – Authorizing a city credit card.
25. **REPORTS/RECOMMENDATIONS** - - From Dept. Heads.
  - a. Street Department –
  - b. Fire Department –
  - c. Police Department –
  - d. Library –
  - e. Treasurer –
26. **REPORTS/RECOMMENDATIONS** - - From Committees.
  - a. Street –
  - b. Keep Auburn Beautiful -
  - c. Economic Development –
  - d. Safety Committee –
  - e. Building Committee -
  - f. Legislative –
  - g. Other Committees & Reports –
27. **ORDINANCE** – Lottery; Sales Outlet Locations; Approval Required; Qualification Standards.
28. **ADJOURNMENT.**

# Possible Motion Format 4-9-12

1. **PLEDGE OF ALLEGIANCE**
2. **ANNOUNCE** – “I am required by law to inform the public that a copy of the Open Meetings Act is posted on the North wall of these Chambers by the entrance door.”
3. **ROLL CALL**
4. **RECOGNITION OF VISITORS\***
5. **APPOINTMENT** – City Council Member 1<sup>st</sup> Ward.
6. **ELECT** Council President.
7. **APPROVAL OF MINUTES OF PREVIOUS MEETING(S).**

POSSIBLE MOTION: I move to dispense with the reading of the March 12, 2012, meeting's minutes and to approve the same as written (or as amended)

8. **APPROVAL OF FINANCIAL REPORT.**

POSSIBLE MOTION: I move to approve the financial report

9. **CLAIMS.**

POSSIBLE MOTION: I move to approve the claim submitted by Auburn Plumbing, Htg. & AC Inc. in the amount of \$155.00

POSSIBLE MOTION: I move to approve the claims presented which have not been previously approved by motion or resolution and ratify the ordinary and necessary expenses allowed and in accordance with Resolution No. 7-11 that was approved February 28, 2011

10. **APPROVAL** for Attendance at Meeting(s).

POSSIBLE MOTION: I move to allow attendance at meeting(s)/trainings as requested

11. **PROCLAMATION** – Arbor Day (April 27<sup>th</sup>).

12. **APPOINTMENTS** –

- Fire Department Member
- Budget/Finance Committee
- Ordinance Committee

POSSIBLE ACTION: Roll call on Appointments

13. **DON WRIGHT** – Regarding speed limit signs and slow children playing signs on M street from Hwy 136 to 18<sup>th</sup> Street.

14. **PRESENTATION** – Alan Jackson-Peru State College Marketing Professor.

15. **DISCUSSION** – Re: BPW to notify Planning Commission of any requests for services outside city limits.

16. **MOTION** to accept bid for 2012 Street Improvements Asphaltic Concrete Overlay project.

POSSIBLE MOTION: I move to accept the bid of Pavers Inc. in the amount of \$232,986.15 for the 2012 Street Improvements Asphaltic Concrete Overlay project.

17. **RESOLUTION** – Accept a proposal for Infill Housing.

POSSIBLE MOTION: I move to authorize and approve a grant of \$10,000.00 to Terry Fulton/TCB Contracting for the purpose of infill housing as proposed by the passage and adoption of Resolution No. 9-12

18. **ORDINANCE** – Accept bid and confirm sale of Lots (Lots 9, 10, 11, and 12; Block 29; Sheridan Addition).

POSSIBLE ACTION: (Ordinance Record-Ordinance No. 5-12)

19. **ORDINANCE** – Accept bid and confirm sale of Lots (Lots 106 and 107; Crestview Addition)

POSSIBLE ACTION: (Ordinance Record-Ordinance No. 6-12)

20. **RESOLUTION** to approve use of Community Development Block Grant Commercial Rehab Funding as suggested by the Revitalization Review Committee – **Authorize** mayor to sign MOUs (Auburn 10-DTR-105).

POSSIBLE MOTION: I move to approve the use of Auburn 10-DTR-105 Community Development Block Grant Commercial Rehab funding as suggested by the Revitalization Review Committee by the passage and adoption of Resolution No. 10-12

21. **DRAWDOWN #25** – Administration related costs only – CDBG #09-HO-6047 (Citywide Owner-Occupied Housing Rehabilitation) and related claims.

POSSIBLE MOTION: I move to approve CDBG #09-HO-6047 (Citywide Owner-Occupied Housing Rehabilitation Program) Drawdown #25 in the amount of \$2382.00 and the related claims

22. **DRAWDOWN #26** – Project related costs only – CDBG #09-HO-6047 (Citywide Owner-Occupied Housing Rehabilitation) and related claims.

POSSIBLE MOTION: I move to approve CDBG #09-HO-6047 (Citywide Owner-Occupied Housing Rehabilitation Program) Drawdown #26 in the amount of \$160 and the related claims

23. **RESOLUTION** – Close the highways for the parade(s).

POSSIBLE MOTION: I move to approve Resolution No. 11-12 regarding the temporary use of the state highways for parades to be held in conjunction with the Nemaha County Fair

24. **RESOLUTION** – Authorizing a city credit card.

POSSIBLE MOTION: I move that the City apply for a credit card pursuant to the terms of the Business Edition Visa Card application by the passage and adoption of Resolution No. 12-12

25. **REPORTS/RECOMMENDATIONS** - - From Dept. Heads.

- a. Street Department –
- b. Fire Department –
- c. Police Department –
- d. Library –
- e. Treasurer –

26. **REPORTS/RECOMMENDATIONS** - - From Committees.

- a. Street –
- b. Keep Auburn Beautiful -
- c. Economic Development –
- d. Safety Committee –
- e. Building Committee -
- f. Legislative –
- g. Other Committees & Reports –

27. **ORDINANCE** – Lottery; Sales Outlet Locations; Approval Required; Qualification Standards.

POSSIBLE ACTION: (Ordinance Record)

28. **ADJOURNMENT.**

POSSIBLE MOTION: I move for adjournment to meet at the call of the Mayor

City Council Proceedings  
March 12, 2012

The Mayor and Council of the City of Auburn, Nemaha County, Nebraska, were called to meet at the City Hall at 1101 "J" Street on March 12, 2012, at 7:00 o'clock P.M., in Regular Meeting, open to the general public.

The meeting was called to order by Mayor Scott Kudrna. Upon roll call, the following members of the City Council were present: Billings, Bishop, Clark, Critser, Erickson and Holtzman. Absent: No one.

Mayor Kudrna announced "I am required by law to inform the public that a copy of the Open Meetings Act is posted on the North wall of these Chambers by the entrance door".

Council approved the February 27, 2012 meeting's minutes as written.

The City Council approved the financial report.

The following claims were presented before the Council for ratification: American Family Life Assurance Co., Wh-81.32; American Recycling & Sanitation, Se-145.00; Black Hills Energy, Ut-78.42; Blue Cross-Blue Shield, Ins-9133.00; Board of Public Works, Ut-4759.25; Consolidated Management Co., Su-161.75; Linda Bantz, Se-309.00; Mark Harms, Ex-500.00; Nemaha County, Se-4693.47; Time Warner Cable, Se-118.76; Verizon Wireless, Se-52.19; Windstream, Ut-121.55; Wright Express, Su-2467.74; Action Technology Services Inc., Se-300.00; Board of Public Works, Maint-Su-247.92; . The following claims (not previously approved by motion or resolution) were presented: Annie Thomas, Reim-90.04; Auburn Elevator Co., Su-94.86; Auburn High School, Bk-40.00; Auburn Memorial Library Petty Cash, Su-49.40; Auburn Newspapers, Se-313.03; Demco, Su-235.05; Eakes Office Plus, Su-56.45; Eggers Brothers Inc., Su-212.21; Filter Care, Su-15.70; Five Nines Technology Group, Se-238.70; Gale Cengage Learning, Bk-408.44; Glenn's Corner Market, Su-38.00; Hobart Sales & Service, Se-323.82; League of NE Municipalities, Reg-Ex-235.00; Mandy Hall Photography, Se-225.73; Nebraska Forest Service, Reg-40.00; Nebraska Municipal Clerk Assn., Mem-25.00; Nemaha County Sheriff, Se-3881.04; Pamida Inc., Su-111.81; Petty Cash, Se-Su-Reim-77.00; Radar Road Tec, Se-140.00; Randy Bennett, Reim-1944.27; Reiman Publications, Bk-30.98; Sack Lumber Co., Su-59.77; Schneider OK Tire Stores, Se-80.00; Scott Kudrna, Reim-91.25; Steve Abernathy, Se-1021.17; Stutheit Implement Co., Su-49.96; Tri-State Office Products, Su-129.95; Xerox Corporation, Se-Su-307.68.

Abbreviations for this legal: AV-Audio Visual; Bk-Book; Contrib-Contribution; Equip-Equipment; Ex-Expense; Fe-Fee; Ins-Insurance; Inspect-Inspection; Int-Interest; Inv-Economic Development Investment; Lic-Licenses; Maint-Maintenance; Mem-Membership; Pen-Pension; Per-Periodical; Re-Repairs; Ref-Reference Materials; Reg-Registration; Reim-Reimbursement; Se-Service; Su-Supplies, Material & Parts; Sub-Subscription; UA-Uniform Allowance; Ut-Utilities; Wh-Withholding.

The City Council approved the claims which have not been previously approved by motion or resolution and ratified the ordinary and necessary expenses allowed and in accordance with Resolution No. 7-11 that was approved February 28, 2011.

Norma Baker talked about heavy traffic on G Street and 10<sup>th</sup> Street.

The request to use the empty lot at 1903/1905 N Street for nature learning stations was approved.

Public Hearing was held to consider the request for a Class B – Beer Off Sale Only License for Farmer's Cooperative dba Farmers Cooperative at 922 J Street, Auburn, Nebraska. Following the public hearing the request was approved.

With five Council Members (Billings, Bishop, Critser, Erickson, Holtzman) voting in favor and one Council Member (Clark) voting in opposition, the plans and specifications for the 2012 Street Improvements-Asphaltic Concrete Overlay project prepared by JEO Consulting Group Inc. were approved and the engineers were authorized to get bids.

The Resolution/Agreement No. 8-12 with Zeilinger Keno Inc., including authorization of the keno operating account and approval of American Legion Post No. 23 as a satellite location was approved.

The use of Auburn 10-DTR-105 Community Development Block Grant Commercial Rehab funding as suggested by the Revitalization Review Committee was approved by the passage and adoption of Resolution No. 7-12.

March 12, 2012

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Ordinance No. 3-12 and Ordinance No. 4-12 amending General Provisions of Parking Rules, Sections 74.01 to 74.16 of Chapter 74 of the City Code of Ordinances were approved.

Reports were given by the following department heads: library, fire department, street department, police department and City Treasurer.

The following committees provided reports: KAB, Economic Development and Safety. A written financial report was provided by the Auburn Community Redevelopment Authority.

A letter from Chris Erickson resigning his position of Council Member from Ward 1 was presented.

The City Council confirmed the appointment of Chris Erickson as a part time police officer effective March 17, 2012. Council Member Erickson abstained from voting.

There being no further business to come before the Mayor and Council, the City Council adjourned.

Sherry Heskett  
City Clerk

J. Scott Kudrna  
Mayor

A complete copy of the minutes is available for inspection at City Hall.

AGENDA ITEM

NO 7

Auburn, Nebraska  
March 12, 2012

The Mayor and Council of the City of Auburn, Nemaha County, Nebraska, were called to meet at the City Hall at 1101 "J" Street on March 12, 2012, at 7:00 o'clock P.M., in Regular Meeting, open to the general public. Advance notice of said Regular Meeting, the designated method of giving notice including the agenda for said meeting, or the availability thereof having been posted at the west front door of the City Hall, at the east door of the Nemaha County Courthouse and in the Auburn State Bank, and having been transmitted to all members of the City Council, all done on or before March 9, 2012. Mayor Scott Kudrna presided over the meeting. The City Clerk of the City of Auburn, Nemaha County, Nebraska, recorded the proceedings

The meeting was called to order by Mayor Scott Kudrna. Upon roll call, the following members of the City Council were present: Billings, Bishop, Clark, Critser, Erickson and Holtzman. Absent: No one.

Mayor Kudrna announced "I am required by law to inform the public that a copy of the Open Meetings Act is posted on the North wall of these Chambers by the entrance door".

Council Member Holtzman moved to dispense with the reading of the February 27, 2012 meeting's minutes and to approve the same as written. The foregoing motion was seconded by Council Member Critser and upon roll call vote, the following Council Members voted "YEA": Bishop, Clark, Critser, Erickson, Holtzman, and Billings. The following voted "NAY": No one. Motion: Carried.

Council Member Bishop moved to approve the financial report; Seconded by Council Member Billings and upon roll call vote, the following Council Members voted "YEA": Clark, Critser, Erickson, Holtzman, Billings, and Bishop. The following voted "NAY": No one. Motion: Carried.

The following claims were presented before the Council for ratification: American Family Life Assurance Co., Wh-81.32; American Recycling & Sanitation, Se-145.00; Black Hills Energy, Ut-78.42; Blue Cross-Blue Shield, Ins-9133.00; Board of Public Works, Ut-4759.25; Consolidated Management Co., Su-161.75; Linda Bantz, Se-309.00; Mark Harms, Ex-500.00; Nemaha County, Se-4693.47; Time Warner Cable, Se-118.76; Verizon Wireless, Se-52.19; Windstream, Ut-121.55; Wright Express, Su-2467.74; Action Technology Services Inc., Se-300.00; Board of Public Works, Maint-Su-247.92; . The following claims (not previously approved by motion or resolution) were presented: Annie Thomas, Reim-90.04; Auburn Elevator Co., Su-94.86; Auburn High School, Bk-40.00; Auburn Memorial Library Petty Cash, Su-49.40; Auburn Newspapers, Se-313.03; Demco, Su-235.05; Eakes Office Plus, Su-56.45; Eggers Brothers Inc., Su-212.21; Filter Care, Su-15.70; Five Nines Technology Group, Se-238.70; Gale Cengage Learning, Bk-408.44; Glenn's Corner Market, Su-38.00; Hobart Sales & Service, Se-323.82; League of NE Municipalities, Reg-Ex-235.00; Mandy Hall Photography, Se-225.73; Nebraska Forest Service, Reg-40.00; Nebraska Municipal Clerk Assn., Mem-25.00; Nemaha County Sheriff, Se-3881.04; Pamida Inc., Su-111.81; Petty Cash, Se-Su-Reim-77.00; Radar Road Tec, Se-140.00; Randy Bennett, Reim-1944.27; Reiman Publications, Bk-30.98; Sack Lumber Co., Su-59.77; Schneider OK Tire Stores, Se-80.00; Scott Kudrna, Reim-91.25; Steve Abernathy, Se-1021.17; Stutheit Implement Co., Su-49.96; Tri-State Office Products, Su-129.95; Xerox Corporation, Se-Su-307.68.

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Council Member Billings moved to approve the claims which have not been previously approved by motion or resolution and ratify the ordinary and necessary expenses allowed and in accordance with Resolution No. 7-11 that was approved February 28, 2011. The foregoing motion was seconded by Council Member Bishop and upon roll call vote, the following Council

Members voted "YEA": Critser, Erickson, Holtzman, Billings, Bishop, and Clark. The following voted "NAY": No one. Motion: Carried.

Norma Baker talked about heavy traffic on G Street and 10<sup>th</sup> Street.

Kim Beger, Deb Reiman, Lynsey Ligouri and other interested parties appeared before the Mayor and City Council to request permission to use the empty lot at 1903/1905 N Street for nature learning stations. Following discussion, Council Member Bishop moved to approve the request to use the empty lot at 1903/1905 N Street for nature learning stations. The foregoing motion was seconded by Council Member Critser and upon roll call vote, the following Council Members voted "YEA": Erickson, Holtzman, Billings, Bishop, Clark, and Critser. The following voted "NAY": No one. Motion: Carried.

Public Hearing was held to consider the request for a Class B – Beer Off Sale Only License for Farmer's Cooperative dba Farmers Cooperative at 922 J Street, Auburn, Nebraska. Darol Grummert with Farmers Cooperative was present to answer questions. There wasn't any opposition to the request. Following the public hearing, Council Member Bishop moved for approval of the request for a Class B – Beer Off Sale Only License for Farmer's Cooperative dba Farmers Cooperative at 922 J Street, Auburn, Nebraska. The foregoing motion was seconded by Council Member Holtzman and upon roll call vote, the following Council Members voted "YEA": Holtzman, Billings, Bishop, Clark, Critser, and Erickson. The following voted "NAY": No one. Motion: Carried.

The plans and specifications for the 2012 Street Improvements-Asphaltic Concrete Overlay project were presented. Council Member Holtzman moved to approve the plans and specifications for the 2012 Street Improvements-Asphaltic Concrete Overlay project prepared by JEO Consulting Group Inc. and authorize the engineers to get bids. The foregoing motion was seconded by Council Member Bishop and upon roll call vote, the following Council Members voted "YEA": Billings, Bishop, Critser, Erickson, and Holtzman. The following voted "NAY": Clark. Motion: Carried.

Council Member Erickson moved to approve the Resolution/Agreement No. 8-12 with Zeilinger Keno Inc., including authorization of the keno operating account and approval of American Legion Post No. 23 as a satellite location. The foregoing motion was seconded by Council Member Critser and upon roll call vote, the following Council Members voted "YEA": Bishop, Clark, Critser, Erickson, Holtzman, and Billings. The following voted "NAY": No one. Motion: Carried. A true, correct and complete copy of said resolution is as follows:

#### RESOLUTION/AGREEMENT NO. 8-12

This agreement is made and entered into on the 12th day of March, 2012, by and between **Zeilinger Keno, Inc.**, a Nebraska corporation, hereinafter called "Keno Contractor", and the **City of Auburn, Nebraska**, hereinafter, the "City".

**WHEREAS**, Keno Contractor is authorized to conduct business pursuant to the statutes of the United States and of the State of Nebraska;

**WHEREAS**, the City Board authorized such a lottery to be established and requested proposals for a keno-type lottery to be operated by an independent contractor lottery operator;

**WHEREAS**, the Keno Contractor's proposal for operating a lottery was accepted by the City;

**WHEREAS**, the Keno Contractor and the City are desirous of continuing the Keno Contractor's exclusive right to operate for the City, a legal, keno-style lottery, within the City for a period of five (5) years from the date of this agreement;

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

1. **DEFINITIONS.**

- a. Gross Proceeds. "Gross Proceeds" shall mean the total aggregate receipts received from the conduct of the lottery without any reduction for prizes, discounts, taxes or expenses and shall include any consideration necessary for participation, and the value of any free tickets, games or plays used; but shall not include any amounts received from the sale of concessions or any other legitimate business operations as authorized hereinbelow.
- b. Expenses. "Expenses" shall mean:
- (1) all costs associated with the purchasing, printing, or manufacturing of any items to be used or distributed in the lottery;
  - (2) all office or clerical expense in connection with the lottery;
  - (3) all promotional expenses for the lottery;
  - (4) all salaries of persons employed to operate, conduct, or supervise the lottery;
  - (5) any rental or lease expense related to the lottery;
  - (6) any fee or commission paid to any person associated with the lottery;
  - (7) license fees paid to the department; and
  - (8) any other costs associated with the conduct of the lottery, but not including taxes paid pursuant to Neb. Rev. Stat. §9-648 or prizes awarded to participants.
- c. Keno Lottery or Keno-Type Lottery. "Keno Lottery" or "Keno-Type Lottery" shall mean any lottery as permitted by Neb. Rev. Stat. §9-607(1)(c)(ii).
- d. Others. For the purposes of this Agreement and except for those definitions expressly set forth herein, unless the context otherwise requires, the definitions found in the *Nebraska County and City Lottery Act*, Neb. Rev. Stat. §§9-601 et seq., and any rules and regulations promulgated thereunder shall be used.

2. **RIGHT TO OPERATE.** The City herewith grants to the Keno Contractor the exclusive right to operate, for and on behalf of the City, a legal, keno-style lottery, as authorized by the *Nebraska County and City Lottery Act*, §§9-601 et seq., R.R.S. (Reissue, 1991); and pursuant to Rules and Regulations duly promulgated by the Nebraska Department of Revenue. Such operation shall be controlled directly by the Keno Contractor and be located within the Corporate boundaries of the City. No other such operation will be allowed by the City during the term of this agreement. No transfer of ownership rights of the Keno Contractor shall occur unless the transfer is first approved in writing by the City.

3. **LOTTERY FACILITIES.**

- a. The Keno Contractor agrees to operate a keno-type lottery from such location(s) as approved by the City Board. The owner of the location will be referred to herein as the "Lottery Operator".
- b. The Keno Contractor may not change, or establish additional locations, without the prior approval of the City Council, which approval shall not be unreasonably withheld.
- c. The parties recognize that the liquor and food operations will be conducted separately by Lottery Operator(s). In the event Lottery Operator(s) should

discontinue liquor and/or food operations for any reason, then this agreement may, upon application by either party, be amended to provide a different location of play or such other changes as may be required to continue the operation of the keno lottery and as agreed to in writing by the parties herein.

- d. The Keno Contractor shall require Lottery Operator(s) to maintain the premises in a clean and sanitary condition and in conformance with all applicable health and safety laws and regulations. Repeated failure to maintain the premises as required, may result in revocation of the premises as an approved location for the keno lottery.
- e. The Lottery Operator shall execute a Sales Outlet Operator Agreement with the Keno Contractor. In the event the Lottery Operator does not comply with the terms and conditions of its agreement with the Keno Contractor, the Keno Contractor shall have the right to terminate the Sales Outlet Operator Agreement and cease keno operations at said facility. Such termination of the Lottery Operator due to a breach of the Agreement shall not be deemed a default of this Agreement. In the event that the terminated facility is the only eligible facility in the City, this Agreement shall be suspended until such time as another location becomes eligible, which amount of time will not be unreasonable under the circumstances, or the Lottery Operator's default has been cured and Keno Contractor is satisfied that the default will not occur again in the future. The absence of a location for a Lottery Operator, or location willing to become a Lottery Operator, shall not be deemed a breach of this Agreement and Keno Contractor shall not be required to obtain a license for the conducting of a keno game until an eligible Lottery Operator is secured.

4. **COMPLIANCE WITH LAW.** The Keno Contractor agrees to 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., together with any and all other federal, state, and local laws and administrative rules and regulations promulgated by the Nebraska Department of Revenue.

5. **LICENSING.**

- a. The Keno Contractor agrees to have the keno-type lottery game or games in operation promptly as licensing allows following notification of the City's acceptance of the Keno Contractor's proposal. The City Council may, in its discretion, grant an extension of the time to commence operation of the keno-type lottery game or games if the Keno Contractor demonstrates to the City Council that it cannot meet the above stated timetable due to conditions of hardship. Prior to commencing operation, the Keno Contractor shall not permit any participation in the keno lottery in exchange for any consideration without actual possession of the required lottery operator's license from the State of Nebraska.
- b. The Keno Contractor agrees to submit to the Nebraska Department of Revenue an application for a license as a lottery operator and all required documentation and information as soon as reasonably possible after final approval of this Agreement, and to promptly complete all acts necessary to obtain such operator's license. The Keno Contractor shall maintain a valid operator's license, as required by Neb. Rev. Stat. §9-630, at all times during the term of this Agreement.
- c. This Agreement shall be specifically conditional upon the Keno Contractor receiving all of the necessary licenses and approval from the Nebraska Department of Revenue and any other governmental agencies or authorities which are necessary in order to conduct a keno-lottery pursuant to the *Nebraska County and City Lottery Act*.

6. **LOTTERY TICKETS.** The Keno Contractor shall provide the expertise, equipment, services, supplies, employees, locations, and financing necessary to operate the keno-type lottery on

behalf of the City. Each outside ticket used in the keno lottery shall have the City's name printed clearly thereon, and shall bear numbers, which numbers shall be in sequence. No such ticket shall be sold unless the name of the City and number are printed thereon.

**7. DIVISION OF OPERATION PROCEEDS.**

a. **TICKET LOTTERY GAME OPERATION:** The gross amount of monthly proceeds shall be divided and turned over as follows after the winning tickets have been paid, to wit:

- (1) Payout is based on a seventy- six percent (76%) payout:
- (2) Two percent (2%) of the gross to the Nebraska State Tax Commissioner, paid by Keno Contractor to the City for transmittal by the City Treasurer.
- (3) Eight percent (8%) of the gross, paid by Keno Contractor to the City for transmittal to the City Treasurer.
- (4) The Keno Contractor's total receipt shall be limited to fourteen percent (14%) of the gross which shall include .25 percent (1/4%) for Federal Excise Tax.

b. It is understood by the City that the City's total share of ten percent (10%) (8% guaranteed plus 2% for taxes) set forth in this paragraph is a target figure based on statistical odds over an infinite period of time. The City further understands that the actual percentage paid for prizes will vary from month to month and that, on occasion, the amount of prize money paid to winners in a given month may result in the Keno Contractor not receiving the entire fourteen percent (14%) of the gross proceeds, and the Keno Contractor not having sufficient net proceeds to pay the City the two percent (2%) to cover state tax, and to pay the eight percent (8%) for the City share, a "Keno Prize Reserve Account" will be established to handle this situation.

c. **Keno Prize Reserve Account -** For each monthly reporting period seventy-six percent (76%) of the gross proceeds of the Keno/lottery operation shall be dedicated to payment of prizes, subject to the following:

(1) Where the total percentage of monies paid to winners is less than seventy- six percent (76%) of the gross proceeds, the proceeds representing the difference between seventy-six percent (76%) and the actual percent paid to winners and uncollected winnings shall be retained in the bank account established pursuant to this Agreement, which account will be referred to hereinafter as the "Keno Prize Reserve Account." The sum so retained shall be referred to as the "Prize Differential Surplus."

(2) **Keno Proceeds Account -** Where the total percentage of monies paid to winners is greater than seventy-six percent (76%) of the gross proceeds, the Keno Contractor shall be permitted to utilize any Prize Differential Surplus accumulated from prior months paid which shall be applied in the following order:

- (a) Winners and State Tax
- (b) Eight percent (8%) to the City for its share
- (c) Keno Contractor - For Current Month's payment (Fourteen percent [14%])

(d) Keno Contractor - For unpaid Keno Contractor's payments due to the payment of prizes in a previous month(s). Said money shall be paid to Keno Contractor in subsequent months until the difference is fully satisfied, without interest.

(e) Prizes unclaimed, after waiting the time period required by Nebraska law, shall be paid to the City.

(f) Keno Prize Reserve Account - all of the remaining proceeds.

The City agrees to fund the Keno Prize Reserve Account with the sum of \$25,000.00 but may withdraw monies from the account at its discretion.

(3) Any monies remaining in the Keno Prize Reserve Account at the completion of the Agreement is the property of the City.

(4) In no event shall the Keno Contractor pay to the City with respect to any calendar month, or portion thereof, an amount less than five percent (5%) of the gross proceeds which shall be used to pay the state tax pursuant to Neb. Rev. Stat. §9-648 for said period or such other amount as the City is required to pay to others, and to be applied to the City's share of the proceeds.

(5) Transfers From Keno Prize Reserve - It is anticipated that Keno Contractor may, from time to time, be required to transfer monies to the Keno Prize Reserve Account for the purpose of maintaining the necessary cash flow to pay the City its eight percent (8%) guaranteed minimum and to pay winners. The Keno Contractor shall be reimbursed from subsequent month surpluses payable to the Keno Prize Reserve Account for any transfers which are needed to pay the City all or any part of its eight percent (8%) guaranteed minimum, also, to pay player prizes, and complete the percentage to be paid to Keno Contractor under the terms of this Agreement.

d. It is further agreed that the City shall not be held liable for any expenses of said operation; and the City's losses, if any, shall be limited to its share of the total gross receipts.

e. From its share of the total gross receipts, the Keno Contractor shall be responsible for any and all necessary expenses of operations and it shall pay the same on a timely basis, holding the City completely harmless for said payments. Keno Contractor's expenses include, but are not limited to, all those necessary for daily operation of the keno-style lottery.

f. The payment of proceeds to the City shall be made no later than fifteen (15) days following the last day of the keno lottery operations for each month and shall be accompanied by the monthly financial report as provided for in Paragraph 9 of this Agreement. Interest shall accrue on all payments due the City, at the judgment interest rate established by state law, from the first day of each month such payment is due until paid. The date of mailing of said remittance shall be deemed the date of payment thereof.

## 8. RECORD KEEPING AND AUDITING.

a. The Keno Contractor agrees to maintain or cause to be maintained complete books and records of all operations associated with the operation of the keno lottery, including, but not limited to, all costs and proceeds associated with the keno lottery and concession sales. All books and records must be sufficient to comply with the

provisions of the *Nebraska County and City Lottery Act*, Neb. Rev. Stat. §9-601 et seq., and the rules and regulations promulgated thereunder. The Keno Contractor shall submit to the City monthly financial reports for said operation no later than fifteen (15) days following the last day of each month's operation. Such monthly reports shall contain all information, necessary to complete any report required by law, rules, regulations, including information related to proceeds, expenses, taxes, fees, maintenance, and commissions for the month reported. The City may, at its option, request that any report be submitted weekly.

- b. The City shall have the right, without notice, to review and examine all books and records of the Keno Contractor relating to the keno lottery operations, sales of concessions, and other legitimate business operations conducted at the keno lottery locations. If one is required by the Nebraska Department of Revenue's regulations, any annual outside audit of the Keno Contractor's books and records which is conducted pursuant to such rules and regulations shall be paid by the Keno Contractor. The City shall have the right to conduct or cause to be conducted an audit of the Keno Contractor's books and records at any time. If the City elects to conduct an audit, it shall bear any cost incurred by it.
- c. At the City's request, the Keno Contractor agrees to provide to the City, and keep current, financial statements of the Keno Contractor, each officer or director of the Keno Contractor, each partner of the Keno Contractor, and all shareholders of the Keno Contractor owning greater than five percent (5%) of the outstanding equity of the Keno Contractor. The financial statements of the Keno Contractor shall be prepared by an independent certified public accountant. The Keno Contractor shall prohibit the transfer of its shares or equity interest to anyone not disclosed to the City at the time of submission of its proposal without prior approval of the City.
- d. The Keno Contractor agrees to notify the City within thirty (30) days of the commencement of any litigations, whether civil or criminal, involving the Keno Contractor, any officer, director, or partner of the Keno Contractor, any shareholder of the Keno Contractor, or any keno manager. In addition, the Keno Contractor agrees to notify the City of any violation of the applicable laws, rules and regulations governing keno lottery operations committed by an employee of the Keno Contractor within twenty-four (24) hours of the time the Keno Contractor knows or should have known of the violation.
- e. The Keno Contractor 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; except that the City shall be responsible for payment of the two percent (2%) lottery tax imposed upon it pursuant to Neb. Rev. Stat. §9-648, but the Keno Contractor shall prepare any report therefor. The Keno Contractor shall register with the Internal Revenue Service pursuant to §4412 of the IRS Code, and pay the required occupation tax, unless the keno lottery operation conducted by the contractor is not subject to the federal excise tax on wagering imposed under §§4401 et seq. of the Internal Revenue Code of 1954. The Keno Contractor shall submit to the City a copy of all reports of any kind filed with the Nebraska Department of Revenue or the Internal Revenue Service within ten (10) days of such filing.
- f. All gross proceeds of the keno lottery, except that portion paid out in cash prizes of One Thousand Dollars (\$1,000.00) or less, shall be deposited in a separate bank account maintained at a bank of the City's choosing. All expenses and prizes, except cash prize payouts of One Thousand Dollars (\$1,000.00) or less, shall be paid by check drawn on said bank account.
- g. Any change or adjustment of the tax percentage due by the State or Federal government shall require the Keno Contractor and the City to recalculate the

percentages paid to the parties out of the remaining gross proceeds after winning tickets. Recalculations shall take effect as of the date the modified tax requirements are imposed.

- h. In the event this Agreement is terminated or forfeited prior to the expiration of its term, the Keno Contractor shall immediately submit to the City a financial report prepared as would otherwise be required showing all required information for the time which has elapsed since the period for which the payment was made. Payment for said period shall be due to the City with fifteen (15) days following the termination.

9. **CITY RULES AND REGULATIONS.** Keno Contractor agrees to comply with all City rules and regulations, that are in addition to State requirements, imposed. Said rules and regulations shall be available to Keno Contractor in printed form.

10. **INSURANCE.** The Keno Contractor shall carry and certify to the City: (1) Public Liability for a minimum limit of \$1,000,000 per occurrence with the City being named as an additional insured thereunder; (2) Property Coverage against perils of loss designated as "special form" to the value designated by Keno Contractor for "Keno Type Equipment", on Keno Contractor's premises; and (3) Worker's Compensation and Employers Liability.

11. **OWNERSHIP OF SYSTEM.** The City acknowledges Keno Contractor's proprietary rights in and to the complete system's specifications as set out herein. Full right, title and interest to all aspects and components of the lottery system installed pursuant to this agreement including its business practices and trade secrets will remain in Keno Contractor, and Keno Contractor will be entitled to reclaim the same after termination of the Agreement.

12. **NON-DISCLOSURE OF KENO CONTRACTOR'S METHODS.** The City agrees that it will not disclose to any other person or entity any information concerning the production, computer programming, security methods, or any other method of process purchased or developed by the Keno Contractor to establish or operate the keno-style lottery operation pursuant to this Agreement.

13. **COMPLIANCE WITH LAWS.** The Keno Contractor agrees to maintain a state operator's license at its expense, and to cause said keno-style lottery operation to conform to the laws of the State of Nebraska, the ordinances of the City, and any all applicable federal statutes. In the event any law, rule or regulation or ordinance, not in effect at the date of this agreement shall change and adversely affect operations of the keno-style lottery, the Keno Contractor shall have a reasonable time to revise said keno-style lottery to conform to said changes. In the event any law is passed or a rule, regulation, or ordinance is adopted to cause said operation to become economically impossible, the Keno Contractor shall have the right to cancel this agreement without cost or penalty.

The Keno Contractor shall be responsible for the operation of the keno lottery at each location in strict compliance with this agreement and all laws, rules and regulations governing keno lottery operations. The Keno Contractor shall notify the City of any violation occurring at a satellite locations, and shall take all necessary action to correct any violation occurring at the satellite location within twenty-four (24) hours of the time the Keno Contractor knows or should have known of the violation, including termination of all keno lottery operations at the satellite location if necessary.

14. **HOURS OF OPERATION.** The Keno Contractor may operate the lottery only during the hours established by the City for the purchase of on-sale alcoholic beverages.

15. **APPROVAL OF EQUIPMENT AND SECURITY.**

- a. Prior to commencing operation, the Keno Contractor shall, if requested, submit for inspection, testing, and approval all lottery equipment proposed to be used in the