LB
08/21/14
Item No. 26

AN ORDINANCE 2014-08-21-0606

APPROVING REVISIONS TO THE OFFICIAL CITY STORE TICKET CONSIGNMENT POLICY AND OFFICIAL CITY STORE TICKET CONSIGNMENT AGREEMENT TO INCLUDE CONSIGNMENT TICKETS OF LOCAL MUSEUMS AND MOTORIZED TOURS FOR THE PURPOSE OF RESALE TO VISITORS AT THE OFFICIAL VISITOR INFORMATION CENTER.

* * * * *

WHEREAS, City Council originally approved the Official City Store Ticket Consignment Policy ("Policy") and City Store Ticket Consignment Agreement ("Agreement") by the passage of Ordinance No. 97239 on February 27, 2003 and revised the Policy and Agreement by the passage of Ordinance No. 99611 on August 26, 2004; and

WHEREAS, it is necessary to revise the Policy and Agreement to address the sale of tickets for local museums and motorized tours and to change the current location of such ticket sales to the City's Visitor Information Center; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Revisions to the Official City Store Ticket Consignment Policy and Ticket Consignment Agreement are authorized and approved. Copies of the Ticket Consignment Policy and Agreement are attached to this Ordinance as **Exhibits I and II**, respectively.

SECTION 2. Funds generated by this Ordinance shall be deposited into Fund 29078000, Internal Order 243000000020 and General Ledger 4903168.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 4. This Ordinance shall take effect immediately upon the receipt of eight affirmative votes; otherwise it shall be effective ten days after its passage.

PASSED AND APPROVED this 21st day of August, 2014.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Robert F. Greenblum, City Attorney

Agenda Item:	**26 (in consent vote: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19A, 19B, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33)**
Date:	08/21/2014
Time:	09:14:51 AM
Vote Type:	Motion to Approve
Description:	An Ordinance approving revisions to the Official City Store Ticket Consignment Policy and Official City Store Ticket Consignment Agreement to include consignment tickets of local museums and motorized tours for the purpose of resale to visitors at the Official Visitor Information Center. [Ed Belmares, Assistant City Manager; Casandra Matej, Director, Convention and Visitors Bureau]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy Taylor	Mayor		x				
Diego Bernal	District 1		x				
Keith Toney	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				x
Mari Aguirre-Rodriguez	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x			x	

EXHIBIT I

SAN DEEP IN THE HEART ANTONIO

City of San Antonio, Department of San Antonio Convention & Visitors Bureau
Official Visitor Center Ticket Consignment Policy

Introduction

The City of San Antonio operates the Official Visitor Information Center "Visitor Center" for San Antonio. The Visitor Center provides multiple services for visitors and locals including retail services and is located at 317 Alamo Plaza. The Visitor Center has frequent inquiries from visitors as to where in the downtown area they could purchase tickets to various amusement parks, major attractions, waterparks, zoos, aquariums, museums, show caves/caverns, wildlife parks, and tour operators.

The Visitor Center promotes the City of San Antonio and its many attractions in order to help the City and the San Antonio Convention & Visitors Bureau achieve its goal of becoming a premier visitors and convention destination. As part of its primary purpose to promote San Antonio and its attractions, the Visitor Center may sell tickets from amusement parks, major attractions, waterparks, zoos, aquariums, museums, show caves/caverns, wildlife parks, and motorized tour operators on a consignment basis. These tickets are offered to our visitors as a convenience and public service in the anticipation of exceeding their customer service expectations.

The City of San Antonio's Convention & Visitors Bureau is responsible for managing the Visitor Center, which includes the purchase and resale of merchandise, including tickets. Approvals regarding the consignment of tickets for the Official Visitor Information Center will be made by the Executive Director of the Convention & Visitors Bureau, or designee (hereinafter referred to as "City Store Representative"). The City Store Representative or designee also has the authority to enter into and modify the Visitor Center Ticket Consignment Agreement, upon consultation with the City Attorney, including, but not limited to, determining ticket prices and adding future Visitor Center locations for selling tickets, without future City Council approval.

Program Regulation

Eligibility

Amusement parks, major attractions, waterparks[1], zoos, aquariums[2], museums[3], show caves/caverns[4], wildlife parks, and motorized tour operators located within Bexar County and contiguous counties shall be eligible to consign tickets to the City of San Antonio Visitor Center for subsequent sale.

Amusement parks, major attractions, waterparks, zoos, aquariums, museums, show caves/caverns, wildlife parks, and motorized tour operators shall appeal to the entire family.

Tickets shall be provided to the City of San Antonio's Visitor Center on a consignment basis. Tickets will be sold by the City of San Antonio's Visitor Center, located at 317 Alamo Plaza, San Antonio, Texas, in accordance with the terms and conditions of the Official Visitor Information Center Ticket Consignment Agreement. Tickets shall not be date or time specific, but may be "season" specific.

All participating partners must sign an annual calendar year consignment agreement with the San Antonio Convention & Visitors Bureau (SACVB). All participating partners recognize that there shall be no guarantee by the SACVB for the number of tickets sold at the Official San Antonio Visitor Information Center. Sales volume will vary depending on seasonality and interest of individual visitors.

Motorized Tour Operators will be required to sign a Supplement Agreement outlining the handling of service complaints.

City of San Antonio, Department of San Antonio Convention & Visitors Bureau
Official Visitor Center Ticket Consignment Policy

Eligibility Disclaimer:

The City of San Antonio Official Visitor Information Center reserves the right to refuse to enter a ticket consignment agreement with any attraction due to excessive complaints, City Code violations, public safety concerns, or any other reason deemed appropriate by the City.

Commission Fees

Commission fee amounts will be reviewed annually.

Required Consignment Ticket Program Administrative Documents

All tickets will be sold by the City of San Antonio's Official Visitor Information Center, in accordance with the terms and conditions of the Official Visitor Information Center Ticket Consignment Agreement. NO EXCEPTIONS.

- ☐ Seller must complete Official Visitor Information Center Ticket Consignment Agreement.
- ☐ Seller must complete a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.
- ☐ Seller must complete a Litigation Disclosure Form.
- ☐ Motorized Tour Operators must complete Consignment Agreement Supplement.

Definitions:

- Theme parks, major attractions
  - Primarily offer hard or "iron" rides.
  - Location provides games of chance.
  - Has live entertainment.
  - Themed environment in its attractions, food, merchandise, games, etc.
  - Location has a controlled entrance.
  - Charge an admission fee.
  - Appeal to the entire family.
- Waterparks
  - Primarily offer water-related rides.
  - Location has a controlled entrance.
  - Location typically charges an all-inclusive admission fee.
  - Charge an admission fee.
  - Appeal to the entire family.
  - Offer food and merchandise.
- Zoos, Aquariums and Wildlife Parks
  - Themed environment offering an array of animal and habitat displays for visitors to learn and enjoy.
  - Location has a controlled entrance.
  - Charge an admission fee.
  - Appeal to the entire family.
  - Offer food and merchandise outlets within the themed environment.

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- Caves/Caverns
  - All are natural caves or caverns beneath the surface of the earth.
  - Caves/caverns were developed for public visitation and are defined as such.
  - Caves/caverns are presented to the visitor with good taste.
  - Tour guides of caves/caverns are hospitable, knowledgeable and courteous.
  - Offer regularly scheduled tour times.
  - Location has a controlled entrance.
  - Charge an admission fee.
  - Appeal to the entire family.
  - Offer food and merchandise.

- Museums
  - A museum is a non-profit, permanent institution in the service of a society and its development, open to the public, which acquires, conserves, researches, communicates and exhibits the tangible and intangible heritage of humanity and its environment for the purposes of education, study and enjoyment. (Definition of museum taken from the International Council of Museums)

- Motorized Tour Operators
  - Specific Tours that have a motorized component to the tour (e.g. bus tours, segway, and other motorized tours.

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[1] The definitions set forth in this policy for theme parks and waterparks are based upon information provided by IAAPA (International Association of Amusement Parks and Attractions)
[2] The definitions set forth in this policy for zoos and aquariums are based upon information provided by AZA (Association of Zoos and Aquariums)
[3] The definitions set forth in this policy for zoos and aquariums are based upon information provided by AAM (American Association of Museums)
[4] The definitions set forth in this policy for zoos and aquariums are based upon information provided by NCA (National Caves Association)

EXHIBIT II

OFFICIAL VISITOR INFORMATION CENTER
TICKET CONSIGNMENT AGREEMENT

This Ticket Consignment Agreement ("Agreement") is made between the City of San Antonio ("Consignee"), a Texas municipal corporation, acting by and through its Executive Director of the Convention and Visitors Bureau, pursuant to the Official Visitor Center Ticket Consignment Policy approved by City Council and _____ ("Seller") and is as follows:

1. Consideration/Purpose.

In consideration of Consignee's agreement to receive from Seller on a consignment basis tickets for admission to Seller's attraction, which falls within one of the definitions set forth in the Official Visitor Information Center Ticket Consignment Policy, known as _____("Attraction) located at _____, for Consignee's subsequent sale to the general public, Seller agrees to provide such tickets to Consignee, as requested. The purpose of this Agreement is to outline the terms and conditions of such agreement.

2. Effective Date/Termination.

This Agreement shall be effective on the date set forth on the final page of this Agreement and shall terminate on **December 31st, _____**. Either Seller or Consignee may terminate this Agreement at any time without cause upon giving the other party at least thirty (30) days advance written notice to the persons and addresses set forth under the signature lines below.

a) In the event of the expiration or termination of this Agreement for any reason, Seller will continue to honor the prices set forth in the Agreement on tickets delivered to the Consignee prior to the expiration or termination date. Consignee shall deliver a final accounting of all sales and unsold tickets within thirty (30) days following the date of termination of this Agreement.

3. Tickets.

a) Provision. Tickets shall be provided to Consignee by Seller for sale on a consignment basis. Sales shall take place at the San Antonio Official Visitor Information Center, 317 Alamo Plaza, San Antonio, Texas and such other City Visitor Information Center locations ("future locations") as may be agreed to by

the parties at a later date without further amendment to the Agreement. The City of San Antonio shall offer no guarantee of minimum sales. Tickets shall not be date or time specific, but may be "season" specific.

b) Delivery. Seller shall deliver sequentially numbered tickets or vouchers to the Official Visitor Information Center and such other future locations within 24 hours of request from an authorized City of San Antonio representative or on the following business day in the case of weekends or holidays. Tickets shall be delivered in requested quantities and Seller shall not limit deliveries based on minimum or maximum quantities or on the volume of prior ticket sales.

c) Prices:

Seller's individual consignment ticket price shall be as follows for the duration of the Agreement:

Child $_____ each
Adult $_____ each
Senior $_____ each

d) Return. Consignee may return all unsold tickets to Seller without penalty at any time during the term of the Agreement. Consignee agrees to return all unsold tickets to Seller within fifteen (15) days following the termination of this Agreement, by certified mail, return receipt requested or by hand-delivery for which Seller will provide a signed receipt.

e) Payment. Consignee will provide Seller a written report of the number of tickets sold each month. Upon receipt of each monthly report, Seller agrees to submit one original invoice to Consignee, based on the monthly report of tickets sold. The original invoice shall be mailed or delivered to: *Convention & Visitors Bureau, Official Visitor Information Center, 317 Alamo Plaza, San Antonio, TX 78205.* Consignee shall not be subject to any charges other than those for the cost of the tickets sold. Charges for handling/delivery or late payment will not be paid by Consignee. Consignee agrees to remit to Seller payment upon receipt and approval of invoices for all tickets sold in accordance with the monthly report. Consignee will remit payment in the form of one (1) check per invoice payable to Seller at the address set forth under the signature line below.

4. Sales Tax. Under this Agreement, Consignee will be responsible for collection of appropriate sales tax on ticket sales for admission to the Attraction. Consignee will be responsible for remitting to the appropriate tax collection agencies all sales tax based on the ticket price. The City of San Antonio is exempt from federal, state, and local taxes (Permit Number 1-74-6002070-8 applies) and invoices submitted to the City of San Antonio shall not include taxes.

5. Sale of Tickets. Consignee reserves the right to sell tickets at whatever price(s) it deems appropriate.

6. Publicity and Use of Marks.

a) Neither party shall use or issue any press release, advertising or promotional material relating to the Agreement without the prior written consent of the other party, which will not be unreasonably withheld. Seller, however, acknowledges that the City of San Antonio ("Consignee" herein) is subject to the provisions of the Texas Public Information Act and may be required to release information pursuant thereto or by lawful court order. In no event shall the City's compliance with the requirements of the Texas Public Information Act as it is written and as it may be amended from time to time, or with a Court order, be an event of default under any provision of this Agreement.

b) Each party's marks, logos, copyrights and other registrations are the property of said party and may not be used without the prior written consent of said party and only in conformance with applicable company policies, rules, regulations, City of San Antonio ordinances, state laws, and/or federal laws. Upon termination or expiration of the Agreement, each party agrees to discontinue immediately the use in any manner whatsoever of any of the other party's marks, logos, copyrights and other registrations and to surrender any material containing the other party's marks, logos, copyrights and registrations. It is expressly agreed between the parties that each party retains full ownership of said party's logos, marks, copyrights and other registrations.

c) Any signs produced for promotional purposes must be submitted to the Visitor Information Center representative the day before the event. Only Visitor Information Center staff may post signs. Unauthorized signs will be removed.

d) With the prior written consent of Seller, which consent will not be unreasonably withheld, Consignee may publicize availability of Seller's tickets at the Official Visitor Information Center and future locations in print advertising and other promotional materials distributed in the Official Visitor Information Center and other locations where Consignee makes tickets available, as well as in magazines and through Consignee's World Wide Web page. Consignee will determine in its total discretion the amount, type, and frequency of such advertising. Consignee does not guarantee any minimum level of marketing, advertising or sales.

7. Insurance. Seller shall maintain comprehensive general liability insurance, in an amount not less than Two Million Dollars ($2,000,000.00) per occurrence, combined single limit for bodily injury, personal injury, death and property damage, endorsed to name Consignee as an additional insured. Seller shall provide Consignee appropriate certificates of insurance and any additional insurance as deemed necessary, appropriate and as requested by Consignee's Risk Manager.

8. **INDEMNITY**.

Seller shall INDEMNIFY, DEFEND and HOLD HARMLESS Consignee, the elected officials, employees, officers, directors, agents, contractors, subcontractors, consultants, subconsultants, representatives, invitees, and volunteers of Consignee, and those visitors to the Visitor Information Center, and any future locations, who purchase tickets from Consignee at the Visitor Information Center, and any future locations, and customers and clients of each of them, from any demands, claims, expenses, damages, causes or action, judgments, losses, fines, penalties, and liabilities whatsoever, including without limitation any court costs and attorneys fees, arising out of or in any way related to any act or omission of Seller, its employees, agents or subcontractors, including without limitation any matter involving bodily injury, personal Injury, property damage, death, or any other injury or damage, or noncompliance with any law or any provision of this Agreement. All without, however, waiving any governmental immunity available to the Consignee under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CONSIGNEE, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, CONTRACTORS, SUBCONTRACTORS, REPRESENTATIVES, INVITEES and VOLUNTEERS OF CONSIGNEE, UNDER THIS AGREEMENT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Seller shall promptly advise Consignee in writing of any claim or demand against Consignee or Seller known to Seller, related to or arising out of Seller's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Seller's cost. Consignee shall have the right, at its options and at its own expense, to participate in such defense without relieving Seller of any of its obligations under this paragraph. Notwithstanding any condition imposed by a policy of insurance to which Seller and Consignee are named, Consignee shall retain the right, at its option and at its own expense, to participate in any such defense provided by Seller under this paragraph.

It is the EXPRESS INTENT of the parties to this Agreement, that the INDEMNITY provided for in this section, is an INDEMNITY extended by Seller to INDEMNIFY, PROTECT and HOLD HARMLESS, Consignee from the consequences of the Consignee's OWN NEGLIGENCE, provided, however, that the INDEMNITY provided for in this paragraph SHALL APPLY only when the NEGLIGENT ACT of the Consignee is a CONTRIBUTORY CAUSE of the resultant injury, death or damage, and shall have no application when the negligent act of Consignee is the sole cause of the resultant injury, death, or damage.

Defense Counsel – Consignee shall have the right to select or to approve defense counsel to be retained by Seller in fulfilling its obligation hereunder to defend and indemnify Consignee, unless such right is expressly waived by Consignee in writing. Seller shall retain Consignee-approved defense counsel within seven (7) business days of Consignee's written notice that

Consignee is invoking its right to indemnification under this Agreement. If Seller fails to retain counsel within such time period, Consignee shall have the right to retain defense counsel on its own behalf, and Seller shall be liable for all costs incurred by Consignee. Consignee shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of Seller, any agent or subcontractor of Seller, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Seller or any agent or subcontractor under worker's compensation or other employee benefit acts.

9. Relationship of the Parties as an Independent Contractor. It is agreed that each party in performing its obligations under this Agreement, acts as an independent contractor. This Agreement is not intended to create an employment or agency relationship or a joint venture, or any other relationship, except Seller and Consignee.

10. Mediation. In the event a dispute arises in connection with this Agreement which the parties cannot resolve between themselves, the parties shall have the option to submit the dispute to nonbinding mediation. The mediator(s) shall be impartial, shall be selected by the parties, and the cost of the mediation shall be borne equally by the parties. The mediation process shall be confidential to the extent permitted by law.

11. Non-Exclusivity Clause. During the term of this Agreement, Seller shall not agree to exclusive contracts with other ticket vendors, which would limit Consignee's ability to sell Seller's tickets. By agreeing to consign tickets to Consignee, Seller shall not be limited to sell tickets through other ticket vendors. Consignee reserves the right to sell tickets of other "Sellers" during the term of this Agreement.

12. Conflict of Interest/Discretionary Contracts Disclosure. Seller acknowledges that it is informed that the Charter of the City of San Antonio ("Consignee herein") and its Ethics Code prohibit a City of San Antonio officer or employee, as those terms are defined in said Ethics Code, from having a financial interest in any contract with the City of San Antonio or any City of San Antonio agency such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City of San Antonio or in the sale to the City of San Antonio of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City of San Antonio officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10%) percent or more of the voting stock or shares of the business entity, or ten (10%) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City of San Antonio contract, a partner or a parent or subsidiary business entity. Seller warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City of San Antonio. Seller further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

13. Entire Agreement. It is the intent of the parties that this Agreement constitutes the entire agreement of the parties and supercedes any and all prior offers, negotiations and agreements.

14. Miscellaneous Provisions:

a) Changes and Amendments. Any changes or amendments or addendum to this Agreement must be approved in writing by both parties. The Executive Director of the Convention and Visitors Bureau ("Director") has the authority to modify this Agreement, upon consultation with the City Attorney.

b) Assignment. This Agreement shall not be assigned or otherwise transferred by Seller or Consignee, except to the parent or subsidiaries of Seller, without the prior written consent of Consignee, as evidenced by passage of a future City of San Antonio ordinance. In the event that Seller assigns this Agreement to a parent or subsidiary, Seller shall provide Consignee with thirty (30) days prior written notice of such action to the address provided herein.

c) Notices. For purposes of this Agreement, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

Seller:	Consignee:
_____	San Antonio Official Visitor Center
_____	317 Alamo Plaza
_____	San Antonio, Texas 78205

Notice of changes of address by either party must be made in writing delivered to the other party's last known address within five (5) business days of such change. Notices shall be deemed received within three (3) days after the date of mailing, unless hand-delivered or delivered by facsimile, which shall be deemed immediately received upon hand-delivery or confirmed transmission by facsimile.

d) Parties Bound. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns, except as otherwise expressly provided for herein.

e) Gender. Words of gender used in this Agreement shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

f) Texas Law to Apply. **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

g) Captions. The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

h) Severability of Provisions. If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

EXECUTED IN DUPLICATE ORIGINALS to be effective as of_____, ____.

Seller:

By: _____
Name: _____
Title:_____

Consignee:

CITY OF SAN ANTONIO

By: _____
Name: Casandra Matej
Title: Executive Director, Convention and Visitors Bureau

APPROVED AS TO FORM:

_____
City Attorney