

CONSENT AGENDA
ITEM NO 12

CITY OF SAN ANTONIO

CONVENTION & VISITORS BUREAU

INTERDEPARTMENTAL CORRESPONDENCE

Memorandum

To: Mayor and City Council

From: Melvin Tennant, CAE, CVB Executive Director

Through: Terry M. Brechtel, City Manager

Copy: Roland A. Lozano, Erik J. Walsh, Andrew Martin, Rebecca Waldman

Date: August 26, 2004

Subject: Ordinance authorizing the Director of the Convention & Visitors Bureau to negotiate and execute agreements for the resale of local attraction consignment tickets in the Official City Store, in lieu of the Director of Asset Management, and revising the Official City Store Ticket Consignment Agreement to reflect the change.

SUMMARY AND RECOMMENDATIONS

This Ordinance amends Ordinance No.97239, passed and approved on February 27, 2003, by revising the Official City Store Ticket Consignment Policy to authorize the Director of the Convention and Visitors Bureau, or his designee, to negotiate and execute agreements, upon consultation with the City Attorney, for the resale of local attraction consignment tickets in the Official City Store, in lieu of the Director of Asset Management, and modifying the Official City Store Ticket Consignment Agreement to reflect this revision.

BACKGROUND INFORMATION

The City of San Antonio operates a retail location called The Official City Store in conjunction with the Visitor Information Center at 317 Alamo Plaza. The Visitor Information Center and Official City Store promote the City of San Antonio and its many attractions in order to help the City achieve its goal of becoming the premier visitors and convention destination.

On February 28, 2002, the current Official City Store Ticket Consignment Policy and Official City Store Ticket Consignment Agreement were adopted and approved by City Council (Ordinance #95365). This policy provided for the sale of tickets on a consignment basis for theme and water park attractions in Bexar County. The Director of Asset Management was then authorized to negotiate and execute these Agreements, upon consultation with the City Attorney's Office.

The Official City Store Ticket Consignment Policy was modified by Ordinance No. 97239, passed and approved on February 27, 2003, to expand the scope of attractions to also include other attractions (natural) such as show caves or caverns, zoos or wildlife parks tickets located in counties contiguous to Bexar County.

As the current Official City Store Ticket Consignment Policy outlines, each individual attraction desiring to consign their tickets at the City Store must be willing to enter into a Ticket Consignment Agreement with the City of San Antonio. The Agreement can be terminated by either party without cause upon (30) thirty days written notice. Tickets shall not be date or time specific, but may be season specific. Each Agreement specifies the rate the City will pay for the tickets, which will remain the same for the term contract. Payment for the tickets is not made by the City until the tickets are sold. Any unsold tickets are returnable to the attractions at no cost to the City. The City has the ability to specify a higher price for the resale of the tickets than the consignment price, thus generating a profit for the City. Specific reporting requirements are outlined in the agreement for both the City and the attractions. In addition, the agreement requires the attractions to indemnify the City and carry appropriate coverage as specified by the City's Risk Manager.

In October 2003, the Convention & Visitors Bureau assumed responsibility for operation of the Official City Store in addition to the Visitor Information Center. As such, it is necessary to revise the Official City Store Ticket Consignment Policy and the Official City Store Ticket Consignment Agreement to authorize the Director of the Convention & Visitors Bureau to negotiate and execute agreements after consultation with the City Attorney, in lieu of the Director of Asset Management.

POLICY ANALYSIS

The approval of this ordinance is consistent with the policy of establishing guidelines for the use of City-owned property, promoting San Antonio's attractions, and maximizing the revenue potential of such said property.

FISCAL IMPACT

The Official City Store generates an estimate between \$5,000 and \$10,000 annually for this program.

The tickets will be offered to the Official City Store on a consignment basis; therefore payment for the tickets is not made until the tickets are sold. Unsold tickets are returnable to the

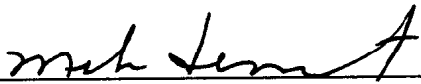
attractions at no cost to the City. The resale price of the tickets will be set higher than the price at which the Official City Store purchases them, thereby generating additional revenue for the City.

COORDINATION


This item has been coordinated with the following: City Attorney's Office, the Department of Asset Management, Contract Services Division and the Convention & Visitors Bureau.

SUPPLEMENTARY COMMENTS

The Ethics Ordinance Required Disclosure form and Litigation Disclosure Form is not required for this action; however, it will be obtained for every agreement executed under the approved policy.

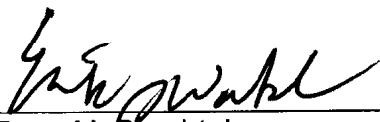


Melvin Tennant, CAE, Executive Director
Convention & Visitors Bureau



Roland A. Lozano
Assistant to the City Manager

Approved:

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Terry M. Brechtel
City Manager

OFFICIAL CITY STORE

TICKET CONSIGNMENT AGREEMENT

This Ticket Consignment Agreement ("Agreement") is made between the CITY OF SAN ANTONIO, a Texas municipal corporation, acting by and through its City Manager or her designee, pursuant to Ordinance No. 95365, passed and approved on February 28, 2002, modified by Ordinance No. 97239, passed and approved on February 27, 2003, and Ordinance No. _____, passed and approved on _____ 2004, ("Consignee") 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 City Store Ticket Consignment Policy, known as _____ located at _____, _____ County, Texas 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 _____. 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 City Store, 317 Alamo Plaza, San Antonio, Texas and such other City Store 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 City Store 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 ten (10) days following the last day of the Attraction's season or termination of this Agreement, whichever is earlier, 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 and one duplicate invoice to Consignee, based on the monthly report of tickets sold. The original invoice shall be mailed or delivered to: Accounts Payable, Finance Department, City Hall Annex, City of San Antonio, 506 Dolorosa, San Antonio, Texas 78205, and the duplicate invoice shall be mailed or delivered to *Convention & Visitors Bureau, Official City Store, 203 S. St. Mary's, 2nd floor, 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 City Store representative the day before the event. Only City Store 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 City Store and future locations in print advertising and other promotional materials distributed in the Official City Store, the adjacent Visitors Information Center, 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 City Store, and future locations who purchase tickets from Consignee at the City Store, and 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 or agents, 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.

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 nonbonding 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 Director of the City of San Antonio Convention and Visitors Bureau ("Director"), or his designee, pursuant to the Ordinance referenced on Page 1 hereof, 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:

City Clerk
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

And

Director
Convention and Visitors Bureau
203 S. St. Mary's, 2nd floor
San Antonio, TX 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.
- 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:

Consignee:

CITY OF SAN ANTONIO,
a Texas municipal corporation

By: _____
Name: _____
Title: _____

By: _____
Name: Melvin Tennant
Title: Director, Convention and Visitors Bureau

APPROVED AS TO FORM:

City Attorney



**The Official City Store
Department of Asset Management, City of San Antonio
Official City Store Ticket Consignment Policy**

I. Introduction

A. The City of San Antonio operates a retail location called The Official City Store ("City Store"), located within the Visitor Information Center at 317 Alamo Plaza. The mission of the City Store is to sell merchandise representing the spirit, cultural heritage, and history of San Antonio.

B. City Store promotes the City of San Antonio and its many attractions in order to help the City achieve its goal of becoming the premier visitors' and convention destination. As part of its primary purpose to promote San Antonio and its attractions, the City Store may sell tickets from theme parks, water parks or other attractions (natural) such as show caves, show caverns, zoos, and wildlife parks on a consignment basis. The City Store has had frequent inquiries from visitors as to where in the downtown area they may purchase tickets to various theme parks, water parks, show caves and show caverns. These tickets are offered to our visitors as a convenience and public service in the spirit of exceeding their customer service expectations.

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

II. Regulations

A. Eligibility

1. For the purposes of this policy, theme parks shall be defined as those which primarily offer hard or "iron" rides, games, and live entertainment within a themed environment that is carried through in its attractions, food, merchandise, games, etc. The theme parks shall have a controlled entrance to an outdoor facility and charge an admission fee that typically includes access to all attractions. The attractions shall appeal to the entire family. For the purposes of this policy, water parks shall be defined as those which primarily offer water-related rides and shall typically charge an all-inclusive admission fee to a facility with a controlled entrance. For the purposes of this policy, other attractions (natural) are those attractions which typically have a controlled entrance to an outdoor facility and charge an admission fee. The attractions appeal to the entire family and offer food and merchandise outlets within the themed environment. Specific other attractions (natural) such as show caves and show caverns shall be defined as caves developed for public visitation. All are natural caves or caverns beneath the surface of the earth. These show caves or caverns are presented to the visitor with good taste, courtesy and hospitality during tours at regularly scheduled times. Other specific attractions (natural) such as a zoo or a wildlife park shall be defined as a themed outdoor environment which offers an array of animal and habitat displays for visitors to learn and enjoy. The definitions set forth in this policy for theme parks and water parks are based upon information provided by IAAPA (International Association for Amusement Parks & Attractions), for show caves and show caverns by the National Caves Association and for zoos and wildlife parks by the American Zoo and Aquarium Association.

2. Theme parks, water parks, or other attractions (natural) such as show caves, show caverns, zoos, and wildlife parks located within Bexar County and contiguous counties shall be eligible to consign tickets to the City of San Antonio for subsequent sale.

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

B. Conflict of Interest/Discretionary Contracts Disclosure/Litigation Disclosure

1. Seller must complete a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.
2. Seller must complete a Litigation Disclosure Form.