

City of Fayetteville Item Review Form

2014-0245

Legistar File Number

06/17/2014

City Council Meeting Date - Agenda Item Only

N/A for Non-Agenda Item

Don Marr

Submitted By

Mayor's Office

Department

Action Required:

An Ordinance to approve the amended Governance documents (Sixth Amendment to the Articles of Incorporation of the Walton Arts Center Council, Inc. and the Fifth Amendment to the Articles of Incorporation of the Walton Arts Center Foundation, Inc.)

Does this item have a cost? No

Cost of this request	Category or Project Budget	Program or Project Name
Account Number	Funds Used to Date \$0.00	Program or Project Category
Project Number	Remaining Balance	Fund Name
Budgeted Item? <input type="checkbox"/>	Budget Adjustment Attached? <input type="checkbox"/>	

V20130812

Previous Ordinance or Resolution # _____

Original Contract Number: _____



Comments:



[Signature] June 3, 2014

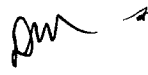
Don Marr June 3, 2014
[Signature]
Paul a. Behn 6-4-2014

This ordinance was left on the first reading on the June 17, 2014 City Council Meeting

STAFF MEMO

TO: City Council Members

THRU: Mayor Jordan 
Kit Williams, City Attorney 

FROM: Don Marr, Chief of Staff 

DATE: May 30, 2014

SUBJECT: 2014-0245 New Inter-local Agreement with U of A, Governance Documents for Walton Arts Center

RECOMMENDATION:

Staff recommends approval of the New Interlocal Agreement with U of A, Governance Documents for the Walton Arts Center Council Inc.

BACKGROUND:

See the City Attorney Memo dated May 15th, 2014 for the history and specific details of this request. The Memo is attached within this packet to this Staff Memo for the Agenda Item

DISCUSSION:

Pulled excerpts from the City Attorney Memo of 5/15/2014:

The Sixth Amendment to the Articles of Incorporation of the Walton Arts Center Council, Inc.

- (A) Removes the designation that the Council is agent of the University and City;
- (B) Broadens its "Purposes" Article from only maintaining and operating the Walton Arts Center on Dickson Street to constructing and operating a new Arts facility in Bentonville, the AMP in Rogers, and in cooperation with the U of A possible venues on campus;
- (C) Preserves the current level of performances at the Walton Arts Center on Dickson;
- (D) Preserves the City and University's power to appoint five (5) members each of the nineteen member board of directors and empowers the Walton Family Foundation to appoint the other nine members rather than having these be "self-appointed" by the other board members.All members of the board of Directors should then be responsible and hopefully responsive to the U of A, the City, or the Walton Family Foundation.

The Fifth Amendment to the Articles of Incorporation of the Walton Arts Center Foundation, Inc.

- (A) Broadens its purposes from fundraising solely for the Walton Arts Center on Dickson Street to fundraising for the proposed Bentonville facility , Rogers AMP, etc.

- (B) Authorizes the Foundation to return the initial deposit of \$1.5 million dollars of City General Funds to begin the Foundation to the City, to be used to help pay for the Parking Deck, the Walton Arts Center headquarters building, the expansion project or other needs. Once this \$1.5 million is returned to the City, the Foundation no longer needs to be our agent for constitutional reasons and its agency status will be terminated.
- (C) Removes the never used power of the U of A Chancellor or the Fayetteville Mayor to basically veto the entire annual budget of the Foundation and Council

BUDGET/STAFF IMPACT:

There is no staff or additional budgetary impact from this governance change

Attachments:

City Attorney Memo May 15, 2014

Walton Arts Center Council, Inc Memorandum May 30, 2014

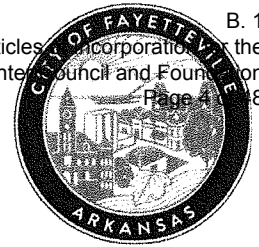
New Inter-local Agreement

- Sixth Amendment of the Articles of Incorporation of the Walton Arts Center Council, Inc.
- Fifth Amendment of the Articles of Incorporation of the Walton Arts Center Foundation Inc.



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Patti Mulford
Paralegal

TO: **Mayor Jordan**
City Council

CC: **Don Marr**, Chief of Staff
Paul Becker, Finance Director

FROM: **Kit Williams**, City Attorney

DATE: **May 15, 2014**

RE: **New Interlocal Agreement with U of A, Governance Documents for
Walton Arts Center, and Lease**

INITIAL MEETINGS

About a year ago, representatives from the Walton Arts Center met with Mayor Jordan and requested a very significant change in how the Walton Arts Center would be governed and managed. Mayor Jordan could not agree to this initial proposal which would have removed most of the City's power and authority. However, he wanted to work with our most generous partner, the Walton Family Foundation, in an effort to preserve the Walton Arts Center's vitality, usefulness, and activity that is so important to our Entertainment District and the quality of life for Fayetteville. This goal to preserve the Walton Arts Center's viability has been our constant lodestar through a year of negotiations.

We then had a meeting with the Chancellor, the U of A Legal Counsel Scott Varady, the Chair of the Walton Arts Center Council (Greg Lee) and other members of the WAC Council including Jeff Gearhart. With its planned expansion into Bentonville to build a larger Arts Center

auditorium and its movement of the Arkansas Music Pavilion into Rogers, the Walton Arts Center, Inc. needed to change its Articles of Incorporation to broaden its allowed purposes which are currently limited to solely operating and maintaining the Walton Arts Center on Dickson Street.

Mayor Jordan then met with representatives of the Walton Family Foundation who expressed their desire and willingness to help our Walton Arts Center in Fayetteville to continue to thrive, but wished that the WAC Council and WAC Foundation would no longer be denoted as "agents" of the City or University. By law, an agent owes its principals (the City and University) a fiduciary duty of utmost good faith and loyalty. The Walton Arts Center staff and the Walton Family Foundation were concerned that the City or University might someday try to exercise our rights as principals to hinder its planned expansion out of Fayetteville into Bentonville and Rogers.

PRINCIPAL GOALS OF THE CITY

Mayor Jordan was willing to accommodate the desires of the Walton Family Foundation (as the Walton Arts Center's major regular donor) and the Walton Arts Center Council if we received enforceable assurances and commitments to preserve the Dickson Street Walton Arts Center in a manner similar to its use of the last few years. In other words, we believed we should receive legal commitments that once a new and larger facility was constructed in Bentonville, the Walton Arts Center on Dickson Street would not be relegated to second class status without Broadway musicals, etc.

NEGOTIATIONS WITH WALTON ARTS CENTER AND U OF A ATTORNEYS

I met with and worked for several months with U of A Counsel Scott Varady and Walton Arts Center, Inc.'s Counsel Marshall Ney to try to meet everyone's expectations and goals. I consulted frequently with Mayor Jordan and Chief of Staff Don Marr to ensure the proposed changes to the Articles of Incorporation of Walton Arts Center Council, Inc., the Articles of Incorporation of the Walton Arts Center Foundation, Inc., their By Laws,

the U of A and City Interlocal Cooperation Agreement, and the new Lease Agreement were acceptable and headed in the right direction.

Please keep in mind that all documents were the result of careful and thoughtful negotiations and compromises. None of the interested parties: (1) The City of Fayetteville; (2) University of Arkansas; (3) Walton Arts Center Council, Inc.; (4) Walton Arts Center Foundation, Inc. or (5) Walton Family Foundation could just dictate a final agreement. We all had to honor each party's legitimate and reasonable concerns. I can now report to you that I believe we have achieved a balanced agreement that satisfies the concerns and wishes of all parties and protects our Walton Arts Center.

SUMMARY OF IMPORTANT CHANGES

(1) The Sixth Amendment to the Articles of Incorporation of the Walton Arts Center Council, Inc.

(A) Removes the designation that the Council is agent of the University and City.

(B) Broadens its "Purposes" Article from only maintaining and operating the Walton Arts Center on Dickson Street to constructing and operating a new Arts facility in Bentonville, the AMP in Rogers, and in cooperation with the U of A possible venues on campus.

(C) Preserves the current level of performances at the Walton Arts Center on Dickson with the following language:

"To expand and renovate the existing Walton Arts Center in Fayetteville as currently proposed by the Walton Arts Center Council, Inc., and after the construction and opening of the performing arts venue in Bentonville, to continue to obtain funding for, operate, manage and maintain the Walton Arts Center on Dickson Street in a manner that is generally commensurate with the quality and quantity of performances and activities occurring prior to 2013. In determining whether this standard is

met, the City of Fayetteville and the University of Arkansas may take into account the quality, type and number of performances and activities occurring at the Dickson Street facility, including the quality, type and number of: (i) Broadway Musicals and performances; (ii) other theatrical, dance and musical performances; (iii) concert performances and (iv) educational programs.”

(D) Preserves the City and University’s power to appoint five members each of the nineteen member board of directors and empowers the Walton Family Foundation to appoint the other nine members rather than having these be “self-appointed” by the other board members. This is a good change since all members of the Board of Directors should then be responsible and hopefully responsive to the U of A, City, or Walton Family Foundation.

(2) The Fifth Amendment to the Articles of Incorporation of the Walton Arts Center Foundation, Inc.

(A) Broadens its purposes from fundraising solely for the Walton Arts Center on Dickson Street to fundraising for the proposed Bentonville facility, Rogers AMP, etc.

(B) Authorizes the Foundation to return the initial deposit of \$1.5 million dollars of City General Funds to begin the Foundation to the City to be used to help pay for the Parking Deck, the Walton Arts Center headquarters building, the expansion project or other needs. Once this \$1.5 million is returned to the City, the Foundation no longer needs to be our agent for constitutional reasons and its agency status will be terminated.

(C) Removes the never used (and probably never usable) power of the U of A Chancellor or Fayetteville Mayor to basically veto the entire annual budget of the Foundation and Council.

(3) Lease Agreement.

The original twenty five year Lease Agreement of 1992 (which would expire on March 30, 2017, subject to renewal options of the Walton Arts Center) has been amended, restated and basically set to begin again upon its approval for a new 25 year term.

(A) Establishes from its new 25 year term which will not end until 2039.

(B) Requires the Walton Arts Center to begin a capital fundraising campaign to renovate and enlarge the Walton Arts Center on Dickson Street.

(C) Removes the area of the Parking Deck from the lease to ensure the City can manage and receive parking revenue (pledged to the Parking Revenue Bond) for the parking deck (built by those bonds).

(D) Warrants that the Walton Arts Center Council, Inc.

“(a)t all times during the Term, shall operate, manage and maintain the Walton Arts Center on Dickson Street in a manner that is generally commensurate with the quality and quantity of performances and activities occurring prior to 2013. In determining whether this standard is met, the City of Fayetteville and the University of Arkansas may take into account the quality, type and number of performance and activities occurring at the Dickson Street facility, including the quality, type and number of: (i) Broadway Musicals and performances; (ii) other theatrical, dance and musical performances; (iii) concert performances and (iv) educational programs.”

COOPERATION WITH U OF A
(City Attorney's Update to May 15th Memo)

Rather than a quitclaim deed, the University is willing to supply the City a long term lease for the parking deck area for nominal consideration. This prevents some fire code issues and ensures the City's management rights for the parking deck.

May 30, 2014

MEMORANDUM

TO: Mayor Lioneld Jordan
Fayetteville City Council

FROM: Walton Arts Center Council
Greg Lee, Chair

Dear Mayor and Fayetteville City Council Members,

On May 19, 2014, the Walton Arts Center Council and the Walton Arts Center Foundation approved the adoption of amended governance documents as follows for the WAC Council and Foundation:

- (a) Fifth Amendment to the Articles of Incorporation of the Walton Arts Center Foundation, Inc.
- (b) the Sixth Amendment to the Articles of Incorporation of the Walton Arts Center Council, Inc.
- (c) the Amended and Restated Interlocal Cooperation Agreement
- (d) the Amended and Restated Bylaws of Walton Arts Center Council, Inc.
- (e) the Amended and Restated Lease between the University of Arkansas/City of Fayetteville and Walton Arts Center Council, Inc.

A summary of the effective changes of these documents is attached, as are the draft documents.

The Walton Arts Center Council further recommended that the Walton Arts Center Foundation authorize the return of the City's initial \$1.5 million investment to the WAC Foundation as an operating endowment to the City for use in the Spring Street Municipal Parking Deck. The original purpose of the funds was to provide income, through use of their earnings in the endowment, to WAC for operating expenses. The funds have been used in this manner to date. The Walton Arts Center Foundation authorized this return of funds, for reinvestment into the Spring Street Municipal Parking Deck.

As per the existing bylaws, we are requesting approval of the above changes from the City Council and the University of Arkansas Board of Trustees (the UA Trustees approved these amendments at their May 2014 meeting). We ask that the Fayetteville City Council review and approve these documents so that they may take effect.

May 30, 2014

Reasons for the Governance Changes:

Several changes are being proposed to the Governance structure of Walton Arts Center (WAC) in order to clarify existing documents and ensure that WAC can continue to achieve its mandate of serving the arts needs of all residents of Northwest Arkansas. There are two key goals to the changes: 1) ensure clarity and flexibility for WAC to continue to meet growing arts and entertainment desires of the region, and 2) affirm and support the original partnership of the UA and City.

Summary of Document Changes

- **The changes provide WAC and WAC Foundation with:**
 - Absolute clarity around the ability for WAC to expand its programs to other venues throughout NWA;
 - Confirmation that budget and operational oversight rests exclusively with the WAC Council;
 - Removal of the principal/agency relationship that currently exists among WAC, the City and the UA;
 - The WAC Council will continue to have broad regional representation with the acknowledgment of the significant contributions and ongoing support of the Walton Family, with the Walton Family Foundation having appointments to the WAC Council of 9 regional representatives, to serve alongside the City and UA's 5 members appointed respectively.
 - Ability for WAC Council to grow proportionally to 38 members
 - The WAC Foundation will no longer be an agent of the City, and the City will no longer have appointments to the Foundation.

- **In addition, the following protective provisions for the City/UA are included:**
 - The Articles of Incorporation of WAC have been amended to provide assurances regarding the quality and quantity of performances occurring at the Dickson Street facility. The Lease among WAC, the

City and the UA contains an identical covenant. Compliance with these programming assurances can be enforced directly by the City or the UA.

- The City and the UA will collectively appoint a majority of the members of the Board of WAC, with each retaining the right to appoint 5 members (or a total of 10 out of 19).
 - While the WAC Council may modify the bylaws from time to time, no changes to the bylaws may be made that are inconsistent with or undermine the protective provisions contained in the Articles of Incorporation.
 - The Foundation will return the City's original gift of \$1.5 million currently in WAC's operating endowment, and those funds will be reinvested in the parking deck project adjacent to WAC.
- **A New Lease between the City/UA/WAC**
 - WAC has maintained a Lease with the City of Fayetteville and the UA for the Dickson Street facility since 1992. That Lease is scheduled to expire in 2017.
 - In order to ensure the long-term stability and viability of the Dickson Street facility and to support the upcoming major renovation of the facility, WAC, the City, and the UA have proposed a new long-term Lease. The new lease is also needed due to the addition of the municipal parking deck being built on land currently under lease by WAC.
 - The new lease will reflect the changes in the governing documents, specifically providing assurances regarding the quality and quantity of performances occurring at the Dickson Street facility.
 - The term of the new Lease will be for an additional 25 years.

ORDINANCE NO. _____

AN ORDINANCE TO APPROVE THE FIFTH AMENDMENT TO THE ARTICLES OF INCORPORATION OF THE WALTON ARTS CENTER FOUNDATION, INC., THE SIXTH AMENDMENT OF THE ARTICLES OF INCORPORATION OF THE WALTON ARTS CENTER COUNCIL, INC. AND THEIR AMENDED BYLAWS, AND THE AMENDED AND RESTATED INTERLOCAL COOPERATION AGREEMENT BETWEEN THE UNIVERSITY OF ARKANSAS AND THE CITY OF FAYETTEVILLE

WHEREAS, the University of Arkansas and City of Fayetteville incorporated the Walton Arts Center Council and Foundation in 1987 pursuant to their Interlocal Cooperation Agreement of December 9, 1986; and

WHEREAS, the Articles of Incorporation have been amended several times and need a fairly comprehensive amendment now to both ensure the continued vitality and viability of “the Walton Arts Center on Dickson Street in a manner that is generally commensurate with the quality and quantity of performances and activities occurring prior to 2013” and to authorize the Walton Arts Center’s right to expand its performance venues into Bentonville and Rogers; and

WHEREAS, the Amended and Restated Interlocal Cooperation Agreement together with proper amendments to the Articles of Incorporation of Walton Arts Center Council, Inc. and Walton Arts Center Foundation, Inc. should assist in the campaign to ensure completion of the Walton Arts Center enlargement and enhancement project; and

WHEREAS, the University of Arkansas Board of Trustees, the Walton Arts Center Council, Inc. Board of Trustees and the Walton Arts Center Foundation, Inc. Board of Trustees have approved this Amended and Restated Interlocal Cooperation Agreement for the Walton Arts Center as well as the Amended Articles of Incorporation and Bylaws for the Council and Foundation.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves the Fifth Amendment to the Articles of Incorporation of the Walton Arts Center Foundation, Inc., the Sixth Amendment to the Articles of Incorporation of the Walton Arts Center Council, Inc. and their amended Bylaws, and the Amended and Restated Interlocal Cooperation Agreement between the University of Arkansas and the City of Fayetteville.

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Ordinance No.

PASSED and **APPROVED** this 17th day of June, 2014.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

FIFTH AMENDMENT TO THE ARTICLES OF INCORPORATION
OF
THE WALTON ARTS CENTER FOUNDATION, INC.

In order to broaden the purposes for which this corporation currently operates to include managing and investing funds for the operation of the proposed Bentonville performing arts venue, the Arkansas Music Pavilion in Rogers, various venues on the University of Arkansas campus as well as the existing Walton Arts Center and related facilities in Fayetteville, and after the planned expansion and enhancement of the Walton Arts Center on Dickson Street as presented to the Fayetteville voters in 2013 is completed, the construction, acquisition and/or operation of other facilities to meet the arts and entertainment needs of Northwest Arkansas as determined by the Walton Arts Center Council, Inc.,

WE, THE UNDERSIGNED, constituting at least two-thirds of the membership of the Board of THE WALTON ARTS CENTER FOUNDATION, INC., at a meeting of the Board of Directors, pursuant to the authority granted in the ELEVENTH Article of the Articles of Incorporation, do hereby amend the Articles of Incorporation of said Corporation as follows:

1. The THIRD Articles which states the purposes and authorized activities of the corporation is hereby amended by deleting subparagraphs (b) (c) (e) (f) and (g) and substituting the following subparagraphs therefore and adding a new subparagraph (n):

Fifth Amendment to Articles of Incorporation
Walton Arts Center Foundation, Inc.
Page 2

THIRD: The purposes for which this corporation is organized and the activities proposed to be transacted, promoted or carried on by it are as follows, to wit:

(b) To acquire by gift, lease, purchase, or otherwise, and to hold, own or lease any real, personal or mixed property, for the uses and benefit of the Walton Arts Center in Fayetteville, the proposed new performing arts venue in Bentonville, the Arkansas Music Pavilion in Rogers, and various performance arts and entertainment venues on the University of Arkansas campus, with its consent, and after the planned expansion and enhancement of the Walton Arts Center on Dickson Street as presented to the Fayetteville voters in 2013 is completed, the construction, acquisition and/or operation of other facilities to meet the arts and entertainment needs of Northwest Arkansas as determined by the Walton Arts Center Council, Inc.; to receive, invest, reinvest and manage funds received from the University of Arkansas, individuals, corporations, the Walton Arts Center Council, Inc., and others as agent for the University of Arkansas and as long as those University funds remain under the control of the Walton Arts Center Foundation, Inc. Investments of funds received from the University of Arkansas shall be made in accordance with the investment policies of the University of Arkansas and the City of Fayetteville and all applicable laws of the State of Arkansas. This corporation shall promptly return to the City of Fayetteville its initial \$1.5 Million investment which together with the University's \$1.5 Million investment created the Foundation. This \$1.5 Million dollar investment shall be returned to the City of Fayetteville for its use for the City's construction of the Parking Deck to be built on a portion of Block Six (6) of the Original Plat of the Town of Fayetteville, Arkansas (upon which the Walton Arts Center

Fifth Amendment to Articles of Incorporation
Walton Arts Center Foundation, Inc.
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is located on a remaining portion of Block Six) or as otherwise determined by the Fayetteville City Council. Once this \$1.5 million has been returned to the City, the Foundation shall no longer be an agent of the City of Fayetteville. Regarding the deposit of the \$1.5 million contributed by the University of Arkansas to initially fund the Foundation, the Foundation is empowered to maintain or, with the University of Arkansas' consent, expend the funds for the proposed enlargement and enhancement project for the Walton Arts Center on Dickson Street. Once these funds have been fully used for the project, the Foundation shall no longer be the agent for the University of Arkansas. Funds received from the Walton Arts Center Council, Inc., individuals, corporations and others may be invested in a reasonable, prudent and sound financial manner based upon a policy of this Corporation to be followed in future investment activity and any applicable requirements of law. This Corporation may employ an investment advisor to invest the assets of the Corporation in accordance with the above investment policies.

(c) To establish an endowment; to use a portion of the amount appropriated for expenditure from the endowment to pay the reasonable expenses of the Corporation; to pay all or part of the remaining amount appropriated for expenditure to the Walton Arts Center Council, Inc., for the operation, maintenance and management of the Walton Arts Center in Fayetteville, the proposed performing arts venue in Bentonville and the Arkansas Music Pavilion in Rogers operated and maintained by the Walton Arts Center Council, Inc., as well as other potential performing arts venues on the University of Arkansas at Fayetteville campus with the University's consent, and after the planned

Fifth Amendment to Articles of Incorporation
Walton Arts Center Foundation, Inc.
Page 4

expansion and enhancement of the Walton Arts Center on Dickson Street as presented to the Fayetteville voters in 2013 is completed, and the construction, acquisition and/or operation of other facilities to meet the arts and entertainment needs of Northwest Arkansas as determined by the Walton Arts Center Council, Inc.

(e) To borrow money and issue notes or other evidences of indebtedness, upon approval of the Walton Arts Center Council, Inc.

(f) To receive and have the opportunity to review the annual budget of the Walton Arts Center Council, Inc., for its operations, maintenance and fundraising.

(g) To sell, lease, or dispose of any property of the corporation conditioned upon approval of the Walton Arts Center Council, Inc., except that it shall not be necessary to obtain approval to sell any property which is donated, sold in the ordinary course of business, or purchased by the corporation for the purpose of immediate resale, nor to transfer property to the Walton Arts Center Council, Inc., nor to buy, sell or trade property held in an investment portfolio.

(n) This corporation is a public benefit corporation.

2. The FIFTH Article shall be amended by deleting the FIFTH Article and substituting the following therefore:

FIFTH: The principal office of this Corporation shall be located at 229 North School Street, Fayetteville, Arkansas 72701, or at such place as the Board of Directors of this Corporation shall from time to time designate as the location of the principal office.

Fifth Amendment to Articles of Incorporation
Walton Arts Center Foundation, Inc.
Page 5

3. The SIXTH Article shall be amended by deleting the SIXTH Article and substituting the following therefore:

SIXTH: The registered agent of the corporation shall be the President/CEO of the Walton Arts Center, 229 N. School Avenue, Fayetteville, AR 72701, who is currently Peter Lane. The Walton Arts Center Foundation Board of Directors may designate the name of the new registered agent for service of process upon the appointment of a new or interim President/CEO without the need for any approval by the City or University by properly filing such new agent's name with the Secretary of State.

4. The EIGHTH Article shall be amended by adding the following subparagraph (c):

EIGHTH: The City, University of Arkansas, Mayor and Chancellor each shall lose his/her/its right of appointment and removal upon the respective use or return of the initial \$1.5 million investment made by the City and the University of Arkansas to this Corporation, with such power of appointment and removal thereafter being vested in the Walton Arts Center Council, Inc.

5. The ELEVENTH Article shall be amended by deleting the ELEVENTH Article and substituting the following therefore:

ELEVENTH: These Articles of Incorporation may be amended by the approving vote of no less than two-thirds (2/3) of all directors of the Corporation provided, however, that no amendment to Articles Three, Eight, Nine and Eleven shall be effective until it has been approved by the Fayetteville City Council and by the Board of Trustees of the University of Arkansas.

SIXTH AMENDMENT TO THE ARTICLES OF INCORPORATION

OF

THE WALTON ARTS CENTER COUNCIL, INC.

RECITALS AND PURPOSES

PREAMBLE

WHEREAS, on January 19, 1987, the University of Arkansas and the City of Fayetteville initially formed and filed the Articles of Incorporation of the nonprofit corporation now entitled The Walton Arts Center Council, Inc. to construct, operate, manage and maintain the Walton Arts Center facility on Dickson Street and related facilities in Fayetteville, Arkansas; and

WHEREAS, using revenues from the University, the City and citizens of Fayetteville and donations from foundations and citizens, the Walton Arts Center Council, Inc. successfully constructed the Walton Arts Center and adjoining facilities and has managed, maintained and operated the Walton Arts Center for decades to present excellent performing arts, entertainment and education for residents and students of Northwest Arkansas; and

WHEREAS, the regional demand for increased performing arts and entertainment opportunities has created the need and desire to construct, renovate, enlarge and adapt the Walton Arts Center in Fayetteville and otherwise improve regional performing arts and entertainment opportunities in a number of ways, which may include:

- (a) the renovation and enlargement of the Walton Arts Center in Fayetteville;
- (b) the construction of a performing arts venue in Bentonville;

Sixth Amendment to Articles of Incorporation
Walton Arts Center Council, Inc.
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(c) the construction of a music pavilion in Rogers to house the Arkansas Music Pavilion;
and

(d) with the express consent of the University of Arkansas, to collaborate and cooperate with the University of Arkansas in Fayetteville for the possible enhancement, remodeling, adaptation, and use of University of Arkansas owned facilities for performance or entertainment venues.

WHEREAS, the need to expand the construction, use and operation of performing arts and entertainment venues within the two county area of Washington and Benton Counties in Northwest Arkansas should be reflected and made an express purpose of the Walton Arts Center Council by placing this expanded purpose within the Articles of Incorporation of the Walton Arts Center Council, Inc. by redrafting Articles Three (3) and Eight (8); and because Amendments to most of these Articles of Incorporations should be made quicker and easier, the requirement that the Fayetteville City Council and University of Arkansas Board of Trustees must approve every amendment should be changed by redrafting Article Eleven (11).

NOW THEREFORE, WE THE UNDERSIGNED, constituting at least two-thirds of the membership of The Board of Directors of THE WALTON ARTS CENTER COUNCIL, INC., at a regular meeting of the Board of Directors held on _____, 2014, pursuant to the authority granted in the ELEVENTH Article of the Articles of Incorporation, do hereby amend the Articles of Incorporation of the Corporation with the agreement and consent of the University of Arkansas and the City of Fayetteville as follows:

1. The THIRD Article shall be amended by deleting subparagraphs (a) (b) (c) (d) (e) (h) (j) in their entirety and substituting the following therefore and adding a new (r):

THIRD: The purposes for which this corporation is organized and the activities proposed to be transacted, promoted or carried on are as follows:

(a) To have all powers and authorities set forth in or contemplated by the Arkansas Nonprofit Corporation Act, A.C.A. §§ 4-28-201 *et seq.* and any amendments thereto and to fulfill a mission to bring great performing artists and entertainers into Northwest Arkansas and thereby to connect, educate and engage our residents through inspiring arts experiences.

(b) (1) To expand and renovate the existing Walton Arts Center in Fayetteville as currently proposed by the Walton Arts Center Council, Inc., and after the construction and opening of the performing arts venue in Bentonville, to continue to obtain funding for, operate, manage and maintain the Walton Arts Center on Dickson Street in a manner that is generally commensurate with the quality and quantity of performances and activities occurring prior to 2013. In determining whether this standard is met, the City of Fayetteville and the University of Arkansas may take into account the quality, type and number of performances and activities occurring at the Dickson Street facility, including the quality, type and number of: (i) Broadway Musicals and performances; (ii) other theatrical, dance and musical performances; (iii) concert performances and (iv) educational programs.

(2) To obtain funding for, operate, manage and maintain a performing arts venue in Bentonville.

Sixth Amendment to Articles of Incorporation
Walton Arts Center Council, Inc.
Page 4

- (3) To obtain funding for, operate, manage and maintain a music pavilion in Rogers for the Arkansas Music Pavilion.
- (4) To explore mutually agreeable opportunities for collaboration and cooperation with the University of Arkansas for facilities owned and/or operated by the University of Arkansas that with the express consent of the University may occasionally be used as venues for musical and entertainment performances.
- (c) To promote and facilitate the exposure to and education about the performing arts for Washington and Benton County primary, secondary and college level students by making its performing arts venues available at reduced fees for special performances or classes for such students and to also promote and facilitate exposure to the performing arts and related fields generally, including working in collaboration with other performing arts venues throughout the State of Arkansas.
- (d) To employ a President/CEO for the Walton Arts Center and all other performing arts venues and related facilities managed by the Walton Arts Center Council, Inc. and to employ such other agents and employees as the Council deems proper and advisable.
- (e) To promulgate reasonable rules and regulations for the operation and use of the Walton Arts Center and all other performing arts venues and related facilities, including where appropriate, to set reasonable fees for use of such venues, assuring always that the greatest access to the venues shall be provided for users and user groups.

Sixth Amendment to Articles of Incorporation
Walton Arts Center Council, Inc.
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(h) To enlist volunteers to assist in the promoting and assisting in the activities for the Walton Arts Center and all other performing arts venues managed by the Walton Arts Center Council.

(j) To acquire by gift, lease, purchase, or otherwise, and to hold, own or lease any real, personal or mixed property, for the uses and benefit of the Walton Arts Center, the proposed larger performance arts facility in Bentonville and all other facilities that will be constructed, maintained or managed by the Walton Arts Center Council; and to solicit and receive contributions, and to engage in fund-raising activities for the benefit of the Walton Arts Center, the proposed larger performance arts facility in Bentonville and all other facilities that will be constructed, maintained or managed by the Walton Arts Center Council. Any funds received may be turned over to the Walton Arts Center Foundation, Inc., for investment and management.

(r) This corporation is a public benefit corporation.

2. The SIXTH Article shall be amended by deleting the SIXTH Article and substituting the following therefore:

SIXTH: The registered agent of the corporation shall be the President/CEO of the Walton Arts Center, 229 N. School Avenue, Fayetteville, AR 72701, who is currently Peter Lane. The Walton Arts Center Council Board of Directors may designate the name of the new registered agent for service of process upon the appointment of a new or interim President without the need for any approval by the City or University by properly filing such new agent's name with the Secretary of State.

Sixth Amendment to Articles of Incorporation
Walton Arts Center Council, Inc.
Page 6

3. The EIGHTH Article shall be amended by deleting subparagraphs (c) and (d) and substituting the following therefore:

(c) The Walton Family Foundation may appoint nine additional Directors to serve as at large members, each of whom must be a resident of the Northwest Arkansas region. All Directors, from whomever or wherever appointed, shall have demonstrated the ability to function as a Director of this Corporation in the interest of its regional goals; shall possess a demonstrated interest in furthering the presentation and appreciation of all types of artistic endeavor; and shall have expressed a desire to further the goals and policies of the Walton Arts Center Council, Inc. through thoughtful and dedicated services on the Board. The initial Directors to be appointed by the Walton Family Foundation shall be appointed as the terms of the previous Directors appointed by the Board of Directors expire. Directors appointed by the Walton Family Foundation may be removed by the Walton Family Foundation at any time with or without cause.

(d) Notwithstanding the limiting language in (a), the Board of Directors may increase the total number of Directors in increments of four with one of the additional members being appointed by the University, one by the City and two by the Walton Family Foundation.

4. The ELEVENTH Article shall be amended by deleting the ELEVENTH Article and substituting the following therefore:

ELEVENTH: These Articles of Incorporation may be amended by the approving vote of no less than two-thirds (2/3) of all directors of the Corporation provided, however, that no amendment to the Recitals and Purposes Section as well as Articles

Sixth Amendment to Articles of Incorporation
Walton Arts Center Council, Inc.
Page 7

Three, Eight, Nine and Eleven shall be effective until it has been approved by the Fayetteville City Council, by the Board of Trustees of the University of Arkansas and by the Walton Family Foundation. The Walton Family Foundation, the City of Fayetteville and/or the University of Arkansas in Fayetteville shall individually or jointly have proper standing and legal authority to enforce compliance of the Walton Arts Center Council, Inc. Board of Directors with the purposes of this corporation as stated in Article Three by request for an injunction in the Washington County Circuit Court.

**AMENDED AND RESTATED BYLAWS OF
WALTON ARTS CENTER COUNCIL, INC.**

**ARTICLE 1.
PURPOSE AND POWERS**

1.1. Purpose. These bylaws are intended to amend and restate the bylaws of Walton Arts Center Council, Inc. (the “**Corporation**”) originally adopted in December of 1986 and subsequently amended from time to time. The Corporation shall have such purposes as are now or may hereafter be set forth in its Amended and Restated Articles of Incorporation of even date (the “**Articles of Incorporation**”) and subsequently filed of record with the Arkansas Secretary of State’s office. The Corporation shall be a public benefit corporation. In the event of a conflict between anything in these By-Laws and any provision or requirement of the Articles of Incorporation, the Articles of Incorporation shall prevail.

1.2. Powers. The Corporation shall have such powers as are now or may hereafter be granted by the Arkansas Nonprofit Corporation Act of 1993, except as such powers may be otherwise modified hereby or by the Articles of Incorporation of this Corporation or that certain Amended and Restated Interlocal Cooperation Agreement (the “**Amended Interlocal Agreement**”) by and between the City of Fayetteville and the Board of Trustees of the University of Arkansas.

**ARTICLE 2.
BOARD OF DIRECTORS**

2.1. General Powers. All of the business and affairs of the Corporation shall be managed and controlled by the Board of Directors.

BYLAWS OF WALTON ARTS CENTER COUNCIL, INC.

2.2. Number. The number of Directors shall be at least nineteen (19). Any person currently serving as a Director of the Corporation shall continue to serve as a Director of the Corporation until his or her term expires and thereafter may be appointed to serve an additional term three (3) years, provided he or she does not exceed three (3) consecutive terms.

2.3. Appointment and Tenure. Directors shall be ratified at each annual meeting or at any regularly scheduled meeting, as needed. A Director shall serve until the earlier of three (3) years, death, resignation or removal. Under no circumstances shall a member of the Board serve for more than 3 consecutive terms and may only be eligible for reelection or reappointment to the Board following an absence or separation of not less than one (1) year.

2.4. Regular Meeting. A regular annual meeting of the Board of Directors shall be held each year on such date, time and place as shall be designated by the Chairman in the notice of the meeting for the purpose of electing officers and for the transaction of such other business as may come before the meeting. The Board of Directors may provide by resolution for the holding of additional regular meetings.

2.5. Special Meetings. Special meetings of the Board of Directors may be called by, or at the direction of the Chairman or a majority of the voting Directors then in office, to be held at such time and place within Northwest Arkansas, as shall be designated in the notice of the meeting.

2.6. Notice. Notice of the time and place of any meeting of the Board of Directors shall be given at least three (3) days prior thereto by written notice delivered personally or sent by mail, facsimile or other electronic transmission to each Director at his or her address as shown on the records of the Corporation. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage thereon

BYLAWS OF WALTON ARTS CENTER COUNCIL, INC.

prepaid. If notice be given by facsimile or other electronic transmission, such notice shall be deemed to be delivered when the facsimile or other electronic transmission is transmitted by the sender to the Director's facsimile number or electronic address. Any Director may waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board needs be specified in the notice or waiver of notice of such meeting, unless otherwise required by law.

2.7. Quorum. A majority of Directors, present in person or by proxy, shall constitute a quorum for the transaction of business at any meeting of the Board.

2.8. Proxies. A Director may vote in person or by proxy executed in writing by the Director. No proxy shall be valid after one month from the date of its execution. Each proxy shall be revocable unless expressly provided therein to be irrevocable, and unless otherwise made irrevocable by law.

2.9. Manner of Acting.

(a) Formal Action By Directors. Except for the removal of a Director pursuant to Article 2.10 hereof, the act of a majority of Directors in person or by proxy present at a meeting at which a quorum is present shall be the act of the Board of Directors. A Director who participates in a meeting via a telephone conference call shall be deemed to be present in person.

(b) Informal Action by Directors. The Board of Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining

BYLAWS OF WALTON ARTS CENTER COUNCIL, INC.

the written approval, including electronic written approval (such as, for example and without limitation, facsimile transmission or email communication), of all the Directors setting forth the action so taken. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

2.10. Resignations and Removal. Any Director may resign from the Board at any time by giving written notice to the Chairman or the secretary of the Corporation and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. A Director may be removed without cause by the vote of two-thirds (2/3) of the Directors then in office.

2.11. Vacancies. Any vacancy occurring in the Board of Directors and any directorship to be filled by reason of an increase in the number of Directors shall be filled by appointment in accordance with the provisions of Article 2.3 of these Bylaws.

2.12. Compensation. Directors as such shall not receive any stated salaries for their services, but nothing herein contained shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor.

2.13. Procedure. The Chairman shall preside at meetings of the Board of Directors. The Board of Directors may adopt its own rules of procedure which shall not be inconsistent with these Bylaws.

**ARTICLE 3.
BOARD OFFICERS AND ADMINISTRATIVE OFFICERS**

3.1. Board Officers/Administrative Officers. The officers of the Corporation shall be a chairman, vice-chairman, secretary and treasurer and shall be current members of the Board. The Corporation may, at the discretion of the Board of Directors, have additional officers. Any

BYLAWS OF WALTON ARTS CENTER COUNCIL, INC.

two or more offices may be held by the same person, except the offices of Chairman and Secretary. The Board shall negotiate and hire a President and shall appoint administrative officers including chief operating officer and chief financial officer (the “**Administrative Officer**” or “**Administrative Officers**”) to serve the Corporation upon such terms and conditions as the Board deems reasonable and prudent. The Chief Executive Officer shall serve at the pleasure of the Board subject to any written employment agreements that may then be in effect. One person may serve in two, but not three, Administrative Officer capacities. In addition, the Administrative Officers shall serve as ex-officio, non-voting members of the Board and shall regularly report to the Board concerning the affairs of the Corporation.

3.2. Election and Term of Office. Other than the Administrative Officers, the officers of the Corporation shall be elected by the Board of Directors at its annual meeting. If the election of officers shall not be held at such meeting, it shall be held as soon thereafter as convenient. Vacancies may be filled or new offices created and filled at any meeting of the Board of Directors. Each officer shall hold office for a term of one (1) year and until his successor shall have been duly elected and qualified unless he shall sooner resign or be removed.

3.3. Removal and Resignations. Any officer appointed by the Board of Directors may be removed by the Board of Directors whenever, in its judgment, the best interests of the Corporation would be served thereby. Any officer may resign at any time by giving written notice to the Chairman or secretary-treasurer of the Corporation, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

3.4. Vacancies. Vacancy in any office may be filled by the Board of Directors for the unexpired portion of the term.

BYLAWS OF WALTON ARTS CENTER COUNCIL, INC.

3.5. Chairman. The Chairman shall be appointed from among the Directors of the Corporation. The Chairman may sign any deeds, mortgages, bonds, contracts, or other instruments which have been authorized to be executed except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws or by statute to some other officer or agent of the Corporation.

3.6. Vice Chairman. The Vice Chairman shall assist the Chairman in the execution of his or her duties and shall act in the Chairman's stead and be vested with the Chairman's authority in his or her absence. In the absence of the Chairman, the Vice Chairman shall preside at meetings of the Board of Directors. The Vice Chairman shall perform such other duties as from time to time may be assigned to him or her by the Chairman or the Board of Directors.

3.7. Secretary. The secretary shall give notice and record the proceedings of all meetings, and have custody of the seal of the Corporation.

3.8. Treasurer. The Treasurer shall have custody of the corporate funds, keep records of receipts, disbursements and other transactions, and deposit all monies to the credit of the Corporation. The Treasurer shall have the authority to authorize ordinary expenses of operation of the Corporation which shall be reported to the Board of Directors at each regular meeting. The Treasurer shall render to the Chairman and the Board of Directors, when required, an account of all transactions and the financial condition of the Corporation. The Treasurer shall give the Corporation a bond, as the Board of Directors may require.

**ARTICLE 4.
CONTRACTS, LOANS, CHECKS, DEPOSITS AND GIFTS**

4.1. Contracts. The Board of Directors may authorize any one or more of the Administrative Officers of the Corporation or some other person, in addition to the officers so

BYLAWS OF WALTON ARTS CENTER COUNCIL, INC.

authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

4.2. Borrowing. No loan shall be contracted on behalf of the Corporation and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances. The Corporation shall abide by any restrictions set forth in the Amended and Restated Interlocal Cooperation Agreement.

4.3. Checks. All disbursements shall be by check or electronic funds transfer. All checks for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation in excess of \$5000 shall be signed by at least two (2) of the officers of the Corporation, unless otherwise indicated in any authorizing resolution adopted by the Board.

4.4. Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may select.

4.5. Gifts. The Board of Directors may accept on behalf of the Corporation any contribution, gift, bequest or devise for the general purposes or for any specific purpose of the Corporation; provided, however, the Board of Directors shall abide by the terms and conditions pertaining to the University of Arkansas Fund as that term is defined in the Amended Interlocal Agreement.

BYLAWS OF WALTON ARTS CENTER COUNCIL, INC.

**ARTICLE 5.
GENERAL PROVISIONS**

5.1. Books and Records. The Corporation shall keep correct books and records of account and shall also keep records of the minutes of the proceedings of the Board of Directors. Electronic and hard copies of the minutes of the meetings of the Board of Directors shall be regularly distributed to each member of the Board of Directors. Records of account shall be reviewed by a qualified accountant to be selected by the Board annually at the close of each fiscal year. The results of this review shall be reported directly to the Board.

5.2. Fiscal Year. The fiscal year of the Corporation shall begin on the first day of July and end on the last day of June in each year unless otherwise determined by resolution of the Board of Directors.

5.3. Seal. The Board of Directors may provide a corporate seal, which shall be in the form of a circle and shall have inscribed thereon the name of the Corporation and the words "Nonprofit Corporation" and the state of incorporation.

5.4. Waiver of Notice. Whenever any notice is required to be given under the provisions of the Arkansas Nonprofit Corporation Act of 1993 or under the provisions of the Articles of Incorporation of the Corporation or these Bylaws, a waiver thereof in writing signed by the persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

5.5. Loans to Officers and Directors Prohibited. No loans shall be made by the Corporation to its officers, Directors or any Administrative Officer. The Directors of the Corporation who vote for or assent to the making of a loan to an officer or Director of the Corporation, and any officer or officers participating in the making of such loan, shall be jointly and severally liable to the Corporation for the amount of such loan until the repayment thereof.

BYLAWS OF WALTON ARTS CENTER COUNCIL, INC.

5.6. Additional Organizations. The Board of Directors may authorize the formation of such auxiliary organizations as would in the opinion of the Board assist in the fulfillment of the purposes of the Corporation.

5.7. Rules. The Board of Directors may adopt, amend or repeal rules (not inconsistent with these Bylaws or the Amended Interlocal Agreement) for the management of the internal affairs of the Corporation and the governance of its officers, agents, committees and employees.

**ARTICLE 6.
COMMITTEES**

6.1. Standing Committees. Standing Committees of the Corporation shall be designated by action of the Board of Directors. Committee members shall be appointed by the Chairman. The Chairman shall appoint Committee chairmen. Responsibilities of each Committee will be assigned at the discretion of the Board of Directors with the input of the Administrative Officers. Committees may put together proposals for approval by the Board prior to implementation.

6.2. Special Committees. The Chairman may, at any time, appoint additional Committees or Task Forces to address issues and policies of the Association.

**ARTICLE 7.
INDEMNIFICATION**

7.1. Generally. Except as prohibited under Chapter 42 of the Internal Revenue Code and the regulations thereunder, the Corporation shall indemnify every person who is or has been a Director, officer or Administrative Officer of the Corporation and such persons' heirs and legal representatives where such person is a party or is threatened with being made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal,

BYLAWS OF WALTON ARTS CENTER COUNCIL, INC.

administrative or investigative, including all appeals, by reason of the fact that such person is or was a Director or officer of the Corporation, or is or was serving at the request of the Corporation in any capacity for any other business organization, against expenses (including attorney's fees), judgment, decrees, fines, penalties and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding shall not of itself create a presumption that the person did not act in good faith or in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation or, with respect to any criminal action, suit or proceeding, that he had reasonable cause to believe that his conduct was unlawful. The foregoing right of indemnification shall be in addition to all rights to which any such Director or officer may be entitled as a matter of law.

7.2. Liability Insurance. The Corporation may purchase and maintain insurance on its own behalf and on behalf of any person who is or was a Director or officer of the Corporation or is or was serving at the request of the Corporation in any capacity for any other business organization, insuring the Corporation and such person against any liability asserted against such person and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Bylaw or applicable law.

BYLAWS OF WALTON ARTS CENTER COUNCIL, INC.

**ARTICLE 8.
AMENDMENTS TO BYLAWS**

The Bylaws may be altered, amended or repealed and new Bylaws may be adopted by a two-thirds majority of the Board of Directors at any regular or special meeting of the Board so long as such alteration, amendment or repeal does not attempt to circumvent, change, alter, modify or amend any the terms or restriction set out in the Amended Interlocal Agreement pertaining to the City of Fayetteville Fund (as defined in the Amended Interlocal Agreement) or bonds issued by the Corporation and secured by liens on real property in the City of Fayetteville.

CERTIFICATE

I, _____, Secretary of _____, certify that the attached Bylaws were adopted at a meeting of the Board of Directors as of the ___ day of _____, 2013 following receipt of an executed copy of the Amended Interlocal Agreement approving the form of these Bylaws.

_____, Secretary

**AMENDED AND RESTATED INTERLOCAL
COOPERATION AGREEMENT**

THIS AMENDED INTERLOCAL COOPERATION AGREEMENT ("Agreement") is made at the City of Fayetteville, Arkansas. Ark. Code Ann. §§ 25-20-130 of 1967, codified as Walton Arts Center Council, Inc. (the "Foundation").

U of A Counsel
Scott Vandy will
supply a slightly
updated copy of this
by the City Council
Agenda Session. *Kit*

WHEREAS, during the City met to form a committee in order to explore the possibility of a joint venture for the construction and usage of a multi-purpose center for the arts facility in northwest Arkansas (the "Joint Arts Center Committee");

WHEREAS, the Joint Arts Center Committee recommended that a center for the arts facility be constructed, owned and operated jointly by the City and the University of Arkansas to serve the arts needs of northwest Arkansas;

WHEREAS, the University of Arkansas and the City entered into an Interlocal Cooperation Agreement dated December 9, 1986 (the "Base Agreement"), which authorized the creation of a non-profit corporation now known as Walton Arts Center Council, Inc. for the construction and operation of a center for the arts;

WHEREAS, the Base Agreement was subsequently amended by a First Amendment to Interlocal Cooperation Agreement dated April of 1990 (the "First Amendment") and was further amended by a Second Amendment to Interlocal Cooperation Agreement approved by the

City on October 19, 1993 and by the University of Arkansas on June 1, 1993 (the “**Second Amendment**”);

WHEREAS, the Base Agreement, First Amendment and Second Amendment are referred to collectively in this Agreement as the “**Original Agreement**”;

WHEREAS, a center for the arts facility and related structures and improvements were constructed pursuant to the terms of the Original Agreement and such facility is currently operated by Walton Arts Center;

WHEREAS, the continued purpose and mission of the Walton Arts Center and the Foundation has been and is to facilitate, promote, and serve the arts needs of the residents of Northwest Arkansas;

WHEREAS, the Walton Arts Center has achieved outstanding success in its purpose and mission. In order to continue to (i) serve as an arts and cultural beacon for residents of Northwest Arkansas, (ii) meet the requests of outside donors, and (iii) fulfill its overall duty to the residents of Northwest Arkansas and the state of Arkansas, it is necessary to clarify the mandate and role of the Walton Arts Center so as to permit it to operate other facilities and venues throughout Northwest Arkansas (such region being broadly defined to include Washington, Benton, Carroll and Madison Counties) and the state of Arkansas in general; and

WHEREAS, it is necessary to amend and restate the Original Agreement in its entirety for the following reasons: (a) to reflect the success of the Walton Arts Center; (b) to permit the Walton Arts Center and its governing board to continue to conduct business as a separate, free-standing non-profit corporation whose purpose is to serve the arts needs of Northwest Arkansas; and (c) to confirm that the Walton Arts Center is no longer to be the agent of the University of Arkansas or City of Fayetteville nor restricted pursuant to the terms of the Original Agreement,

but only must comply with the terms of this new Lease Agreement being entered into in 2014 (the “2014 Lease Agreement”) and its Amended Articles of Incorporation.

NOW, THEREFORE, the Original Agreement is amended and restated in its entirety as provided below.

ARTICLE I

The Walton Arts Center shall have full and complete authority to manage, operate, and maintain the Walton Arts Center in Fayetteville, Arkansas pursuant to its 2014 Lease Agreement and Articles of Incorporation. The Walton Arts Center shall also have full authority to manage, operate and maintain such other facilities in Northwest Arkansas pursuant to its powers and duties contained in its Articles of Incorporation to serve the arts needs of residents of Northwest Arkansas. The purposes, powers and duties of the Walton Arts Center shall be those set out in the Amended and Restated Articles of Incorporation and By-laws.

The separate non-profit corporation, Walton Arts Center Foundation, Inc., now in existence, shall maintain an endowment and pay over to the Walton Arts Center a portion of that endowment or the income or earnings from it not less than annually for the construction, operation, management, and maintenance of Walton Arts Center facilities and programming in Northwest Arkansas, subject to the qualification set forth in Article II below.

ARTICLE II

FINANCIAL CONDITIONS/TERMS

The Foundation shall return or use the Three Million Dollars (\$3,000,000.00) contributed by the University of Arkansas and City of Fayetteville to begin the Foundation as follows.

Regarding the \$1.5 million contribution by the City of Fayetteville to initially fund the Foundation (along with the \$1.5 million from the University of Arkansas), the Foundation is

empowered to and shall return this \$1.5 million to the City of Fayetteville for the City's use for its construction of the Parking Deck to be built on a portion of Block Six (6) of the Original Plat of the Town of Fayetteville, Arkansas (upon which the Walton Arts Center is located on a remaining portion of Block Six) or as otherwise determined by the Fayetteville City Council. Once this \$1.5 million has been returned to the City, the Foundation shall no longer be an agent of the City of Fayetteville.

Regarding the deposit of the \$1.5 million contributed by the University of Arkansas to initially fund the Foundation, the Foundation is empowered to maintain or, with the University of Arkansas' consent, expend the funds for the proposed enlargement and enhancement project for the Walton Arts Center on Dickson Street. Once these funds have been fully used for the project, the Foundation shall no longer be the agent of the University of Arkansas.

Any real property currently used or occupied by the Walton Arts Center in the City shall only serve as collateral for a loan or for bonded indebtedness for an existing or new Walton Arts Center facility in the City, if approved in writing by the City.

Simultaneous with the execution of this Agreement, the Walton Arts Center will enter into an amended lease agreement, referred to in this Agreement as the 2014 Lease Agreement, with the University of Arkansas and the City to memorialize the financial and programming commitment the Walton Arts Center will make to the City and the University of Arkansas during the term of the 2014 Lease Agreement.

ARTICLE III

DURATION/REPORTS

The Foundation shall provide a general financial report to the City so long as it continues to have in its possession any portion of the initial \$1.5 million contribution from the City, and to

the University of Arkansas so long as it continues to have in its possession any portion of the initial \$1.5 million contribution from the University of Arkansas.

ARTICLE IV

DISSOLUTION

In the event of dissolution of the Walton Arts Center or the Foundation, all of the net assets of the dissolved corporation shall be distributed and paid out for such charitable purposes as may be determined by the governing documents of the corporation, but otherwise in accordance with the provisions of the Arkansas Non-Profit Corporation Ark. Code Ann. § 4-28-201, as amended, and the Internal Revenue Code.

ARTICLE V

BINDING AGREEMENT

This Agreement shall be binding upon the parties hereto, their successors and assigns and may be signed in one or more counterparts each of which, when taken together, constitutes one agreement.

CITY OF FAYETTEVILLE:

Approved by Resolution adopted by the Fayetteville City Council on the ___ day of _____, 2014.

LIONELD JORDAN, MAYOR

ATTEST: _____
SONDRA SMITH, CITY CLERK

BOARD OF TRUSTEES OF THE UNIVERSITY OF ARKANSAS:

Approved by Resolution adopted by the Board of Trustees of the University of Arkansas
on this _____ day of _____, 2014.

JIM VON GREMP, CHAIRMAN
BOARD OF TRUSTEES OF THE
UNIVERSITY OF ARKANSAS

ATTEST: _____
JANE ROGERS, SECRETARY

BOARD OF TRUSTEES OF THE WALTON ARTS CENTER COUNCIL, INC.:

Approved by Resolution adopted by the Board of Trustees of the Walton Arts Center
Council, Inc. on the _____ day of _____, 2014.

GREG LEE, CHAIRMAN
BOARD OF TRUSTEES OF THE
WALTON ARTS CENTER COUNCIL, INC.

BOARD OF TRUSTEES OF THE WALTON ARTS CENTER FOUNDATION, INC.:

Approved by Resolution adopted by the Board of Trustees of the Walton Arts Center
Foundation, Inc. on the _____ day of _____, 2014.

JERRY VEST, CHAIRMAN
BOARD OF TRUSTEES OF THE
WALTON ARTS CENTER FOUNDATION, INC.

EXHIBIT A

**AMENDED AND RESTATED ARTICLES OF INCORPORATION of
WALTON ARTS CENTER COUNCIL, INC.**

(See attached)

EXHIBIT B

**AMENDED AND RESTATED BYLAWS of
WALTON ARTS CENTER COUNCIL, INC. (See attached)**

EXHIBIT C

**AMENDED AND RESTATED ARTICLES OF INCORPORATION of
WALTON ARTS FOUNDATION, INC.
(See attached)**

EXHIBIT D

**AMENDED AND RESTATED BYLAWS of
WALTON ARTS CENTER FOUNDATION, INC.
(See attached)**

EXHIBIT E

**FORM OF AMENDED AND RESTATED LEASE
(See Attached)**

Exhibit E