

Legistar ID No.: 2016-0545

**AGENDA REQUEST FORM**

**FOR: Council Meeting of December 6, 2016**

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**FROM:**

**City Attorney Kit Williams**

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**ORDINANCE OR RESOLUTION TITLE AND SUBJECT:**

A RESOLUTION TO APPROVE THE AMENDED AND RESTATED ARTICLES OF INCORPORATION OF THE WALTON ARTS CENTER FOUNDATION, INC. AND TO AUTHORIZE MAYOR JORDAN'S SIGNATURE THEREON

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**APPROVED FOR AGENDA:**



City Attorney Kit Williams

Nov 10, 2016

Date



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: **November 10, 2016**

RE: **Amended and Restated Articles of Incorporation for the Walton Arts Center Foundation, Inc.**

A portion of the year and half negotiations with the Walton Arts Center and the University to facilitate the renovation and enlargement of the Walton Arts Center on Dickson Street was the agreement of the six page Fifth Amendment to the Articles of Incorporation of the Walton Arts Center Foundation. One of the primary things this amendment accomplished was to make available to the City \$1.5 Million for the Parking Deck or Walton Arts Center expansion. The Foundation had had custody of this \$1.5 Million since its establishment to ensure sufficient maintenance, etc. of the Walton Arts Center.

The City Council approved this Fifth Amendment by Ordinance No. 5693 (July 1, 2014) which authorized Mayor Jordan to sign the amendment which he did on July 7, 2014. This coincided with the approval and signature of the new long term lease of the Walton Arts Center, the new Interlocal Agreement with the University of Arkansas, the Sixth Amendment of the Walton Arts Center Council, Inc.'s Articles of Incorporation and other documents.

The overall objective of our negotiations was to ensure that the Walton Arts Center on Dickson Street would remain as active and vibrant as ever - even if another venue was built in Bentonville. The upcoming reopening of the renovated

and enlarged Walton Arts Center served by the City's new parking deck is evidence that Mayor Jordan's and my long negotiations have been successful.

Recently you may remember, the Fayetteville City Council approved the Amended and Restated Articles of Incorporation for the Walton Arts Center Council. This placed all current provisions of the Articles in one document so persons would not have to look through six or seven documents to determine whether a proposed action by the Walton Arts Center Council was authorized by its Articles of Incorporation. We now need to do this for the Foundation also.

Walton Arts Center attorney Marshall Ney prepared the Amended and Restated Articles of Incorporation for the Walton Arts Center Foundation. I reviewed them, checking the other six Articles and Amendments to the Articles of Incorporation for accuracy. I have corrected the only two minor discrepancies or typos that I found and now can recommend these Amended and Restated Articles for your consideration and approval.

**AMENDED & RESTATED ARTICLES OF INCORPORATION**

**OF**

**THE WALTON ARTS CENTER FOUNDATION, INC.**

WE, THE UNDERSIGNED, in order to form a nonprofit corporation for the purposes hereinafter stated, under and pursuant to the provisions of the Arkansas Nonprofit Corporation Act (Acts 1963, No. 176), Ark. Stat. Ann. §§ 64-1901-1924, DO HEREBY CERTIFY as follows:

**FIRST:** The name of the corporation is THE WALTON ARTS CENTER FOUNDATION, INC.

**SECOND:** The duration of the existence of this organization shall be perpetual.

**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:

- (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.
- (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 performing 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

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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 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 and the City of Fayetteville 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 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 invested 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 an agent for the University of Arkansas. Funds

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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 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.
- (d) To employ such employees and agents as it may deem proper to carry out the purposes of the Corporation.

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- (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.
- (h) To enter into agreements with the City, the University, any other city or county, the State of Arkansas, the U.S. Government, or any agency or instrumentality thereof, or with any private group, to exchange, borrow or loan property of the corporation.
- (i) To enter into any lawful contracts and do all other things which are convenient or necessary to fulfill the purposes of the corporation.
- (j) The purposes of this corporation are expressly declared not to be for gain or individual profit and it shall be operated entirely on a nonprofit basis. No part of its income shall be distributed to its members, directors or officers; provided however, that officers, directors and employees may be reimbursed for expenses incurred in attending to their authorized duties. In the event this corporation is dissolved, voluntarily or involuntarily, all of its net assets shall be distributed and paid out for such purposes as may be determined by the last Board of Directors of

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the corporation, subject to the approval of the City Council of the City of Fayetteville and the Board of Trustees of the University of Arkansas in accordance with the provisions of the Arkansas Nonprofit Corporation Act, Ark. Stat. Ann. § 64-1901 *et seq.*, and the Interlocal Cooperation Agreement.

- (k) To do each and every act, which is ordinary, necessary, or reasonable to obtain and maintain the status of a tax exempt organization for the purposes of federal and state income taxation and ad valorem taxation.
- (l) The purposes for which the corporation is organized are exclusively religious, charitable, scientific, literary and educational within the meaning of Internal Revenue Code 501(c)(3) or the corresponding provision of any future United States Internal Revenue Law.
- (m) Notwithstanding any other provisions of these articles, this organization shall not carry on any other activities not permitted to be carried on by an organization exempt from Federal income tax under Internal Revenue Code 501(c)(3) or the corresponding provision of any future United States Internal Revenue Law.
- (n) This corporation is a public benefit corporation.
- (o) In the event of dissolution, the residual assets of the organization will be turned over to one or more organizations which themselves are exempt as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code or corresponding sections of any prior or future Internal Revenue Code, or to the Federal, State or local government for exclusive public purpose.



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FOURTH: The names and addresses of the incorporators are as follows:

<u>Name</u>	<u>Address</u>
1. Dr. Stanley Smith	2209 Golden Oaks Drive Fayetteville, Arkansas 72703
2. Scott Linebaugh	717 Calvin Fayetteville, Arkansas 72701
3. Linda Malone	1216 W. Lakeridge Fayetteville, Arkansas 727013
4. Elaine M. Longer	2387 Twelve Oaks Drive Fayetteville, Arkansas 72703
5. Winfred Thompson	508 N. Sequoyah Drive Fayetteville, Arkansas 72701
6. Billie J. Starr	210 Ravenwoods Lane Fayetteville, Arkansas 72701

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.

SIXTH: The registered agent of the corporation shall be the Executive Director/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 Executive Director/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.

SEVENTH: The initial Board of Directors shall consist of six (6) directors. The persons who are to serve as initial directors are:

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|---|---|
| 1. Dr. Stanley Smith<br>(3 year initial term) | 2. Scott Linebaugh<br>(__ year initial term)  |
| 3. Linda Malone<br>(1 year initial term)      | 4. Elaine M. Longer<br>(__ year initial term) |
| 5. Winfred Thompson<br>(2 year initial term)  | 6. Billie J. Starr<br>(__ year initial term)  |

The initial directors will serve until their successors qualify.

EIGHTH:

- (a) Effective July 1, 1993, the affairs and business of this Corporation shall be controlled and conducted by a Board of Directors consisting of nine (9) Directors, who shall be appointed as follows:
- (i) The Board of Trustees of the University of Arkansas and the Fayetteville City Council shall each appoint three (3) Directors.
  - (ii) The remaining three (3) Directors shall be jointly appointed by the Mayor of the City of Fayetteville and the Chancellor of the University of Arkansas, Fayetteville, from nominees submitted by the Directors of the Corporation. The appointments shall be subject to the approval of the Fayetteville City Council and the Board of Trustees of the University of Arkansas. The Directors of the Corporation shall nominate a number of persons equal to three (3) times the number of available Director positions. The nominees shall be residents of the region served by the Walton Arts Center and shall have demonstrated an interest in the Walton Arts Center and the ability to oversee the management and investment of the funds of

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this Corporation in the best interest of the Walton Arts Center. The Mayor and the Chancellor may consider all of the nominees for any vacancy.

- (b) The term of office for each position on the Board of Directors shall be three (3) years beginning on July 1 of the year of appointment, and ending on June 30 of the third year thereafter. The terms shall be staggered so that the terms of one Director respectively appointed by the Fayetteville City Council, the Board of Trustees, and the Mayor and Chancellor shall end each year. The initial terms of the three Directors appointed by the Mayor and Chancellor shall be staggered, so that the term of one Director shall end on June 30, 1994; the term of one Director shall end on June 30, 1995; and the term of one Director shall end on June 30, 1996. Each Director shall continue to hold his/her position until his/her successor has been appointed and qualified. The City Council and the Board of Trustees shall have the right to remove any Directors appointed by them at any time, with or without cause. Those Directors appointed by the Mayor and Chancellor may only be removed in the event of permanent disability rendering the Director incapable of performing his/her duties as Director, or upon unexcused absences from three (3) consecutive Board meetings.
- (c) 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.

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- (d) Effective July 1, 1990, no Director shall serve more than two (2) consecutive complete three (3) year terms. For Directors appointed to terms which began prior to July 1, 1990, this limitation shall apply only for terms beginning on or subsequent to July 1, 1990.
- (e) The Board of Directors may make rules, policies, and regulations for the management of the affairs of this Corporation from time to time, including the appointment of an Executive Committee and other committees, to oversee and conduct the Corporation's activities. Any committee shall have and may exercise such powers and shall be subject to such limitations as may be set out in the By-laws of the Corporation or in the resolution creating the committee.

NINTH: This Corporation shall have no members. The University of Arkansas, and the City of Fayetteville, Arkansas, acting through their respective governing bodies, shall have and exercise the rights to select, appoint and remove directors of the corporation as set forth elsewhere in these Articles, the By-Laws, and the Interlocal Cooperation Agreement, and to the extent that Ark. Stat. Ann. §§ 64-1910 or 64-1911 shall ever be construed to require membership in the corporation in order to exercise such rights, then the University of Arkansas and the City of Fayetteville shall be and constitute such members.

TENTH: The Corporation shall indemnify to the fullest extent permitted by law any present or former officer or director of the Corporation who is made or threatened to be made a party to any civil, criminal, administrative or arbitative action, suit or proceeding and any appeal thereof (and any inquiry or investigation which could lead to such action, suit or proceeding). This indemnification shall extend to all expenses, liabilities, and losses, including attorney's fees, judgments, fines and amounts paid or to be paid in settlement, reasonably incurred by reason of

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the fact that such person is or was a director or officer of the Corporation. The Board of Directors of the Corporation may cause the Corporation to purchase and maintain insurance on behalf of any present or former officer or director of the Corporation against any liability asserted against such person and incurred in his or her capacity as an officer or director of the Corporation.

ELEVENTH: These Articles of Incorporation may be amended by the approving vote of not 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.

APPROVED by Ordinance No. \_\_\_\_ adopted by the City Council of the City of Fayetteville, on this \_\_ day of \_\_\_\_\_, 2016.

CITY OF FAYETTEVILLE

By: \_\_\_\_\_  
Mayor Lionel Jordan

ATTEST:

\_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_, 2016

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APPROVED by Resolution adopted by the Board of Trustees of the University of  
Arkansas on this \_\_ day of \_\_\_\_\_, 2016.

BOARD OF TRUSTEES OF THE  
UNIVERSITY OF ARKANSAS, ACTING  
FOR THE UNIVERSITY OF ARKANSAS,  
FAYETTEVILLE

By: \_\_\_\_\_  
Joseph E. Steinmetz  
Chancellor

ATTEST:

\_\_\_\_\_  
Notary Public

Date: \_\_\_\_\_, 2016

Approved by more than two thirds of the membership of the Board of Directors of the  
Walton Arts Center Foundation, Inc. at a regular meeting of the Board of Directors, at which  
time \_\_ members voted in favor hereof.

WALTON ARTS CENTER  
FOUNDATION, INC.

By: \_\_\_\_\_  
Chairman of the Board

ATTEST:

\_\_\_\_\_  
Notary Public

Date: \_\_\_\_\_, 2016