

# DELEGATE AGENCY AGREEMENT

THE STATE OF TEXAS       ',  
                                          ',       KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF KENDALL       '

This Agreement made effective the 1<sup>st</sup> day of October, 2021, by and between the CITY OF BOERNE, TEXAS, a home-rule municipal corporation located in Kendall County, Texas, (“CITY”) and the BOERNE PERFORMING ARTS, a 501(c)(3) non-profit organization (“ARTS”), each acting herein by and through its duly authorized officers.

**WHEREAS**, the City, by authority of its general governmental powers reserved to it under the Texas Constitution, has provided certain public funds for the accomplishment of a public purpose; and

**WHEREAS**, the City has adopted a budget for the expenditure of such funds, and included therein is an allocation of General Fund for programs of the ARTS; and

**WHEREAS**, the ARTS is an organization with a mission to bring the world of performing arts to Boerne by presenting concerts that feature internationally acclaimed artists, educating through student outreach programs, and enriching the quality of life in the community; and

**WHEREAS**, the ARTS' mission is to serve the needs of the citizens of all ages and positively impact the lives of several thousand students through its "FOR KIDS" programs; and

**WHEREAS**, the ARTS' function is to develop and sustain an environment that supports and promotes awareness, appreciation, education, and access to the arts for residents of the CITY and Kendall County as a whole; and

**WHEREAS**, the ARTS provides a unique dimension that enhances the economic well-being and quality of life for the residents of the CITY and Kendall County; and

**WHEREAS**, the City Council has found and determined that the above programs, services, mission and functions of the ARTS accomplish a valuable and important public purpose

for the citizens of Boerne.

NOW THEREFORE:

The parties hereto agree as follows:

1. The ARTS will provide, oversee, administer, and carry out all programs and services described above in a manner satisfactory to the City.
2. The ARTS agrees that any funds paid to it by the City shall be used only in the performance of programs and services described above.
3. The City hereby agrees to pay to the ARTS FIFTEEN THOUSAND AND NO/100 DOLLARS (\$15,000.00) from the General Fund. Payment of \$3,750 shall be made quarterly beginning October, 2021 and ending September, 2022.
4. It is expressly understood and agreed by and between the parties that the ARTS is hired and engaged as an independent contractor and is not an officer, agent or employee of the City.
5. It is understood and agreed by and between the parties that a fiduciary duty is created in the ARTS with respect to expenditure of revenue provided in accordance with the approved proposal.

Therefore:

- A. The ARTS shall provide to the City Manager periodic reports within thirty (30) days after the end of each three (3) month period beginning with the period ending December 31, 2021 on the activities that are conducted to benefit the City, and expenditures made hereunder, as well as an annual financial statement listing the expenditures made from the funds paid hereunder.
- B. The ARTS shall maintain complete and accurate financial records of each expenditure of funds paid hereunder and, upon request of the City Council or City Manager, shall make the records available for inspection and review.
- C. Further, the ARTS shall obtain and supply to the City on or before January 31,

2022, an accounting by numbers, samples, registrations or other method acceptable to the City Manager detailing the persons served by the ARTS's programs and functions described herein.

6. This Agreement shall begin on the execution date hereof and shall continue in force until September 30, 2022. This Agreement may be terminated by the City upon thirty (30) days notice for noncompliance with the terms of the Agreement.

7. Any notice necessary or appropriate relative to this Agreement shall be effective when deposited in the United States mail, either certified or registered mail, postage prepaid and addressed to the City Manager of the City of Boerne, City Hall, 447 N. Main, Boerne, Texas 78006 or to the Boerne Performing Arts, 215 West Bandera Road, Ste, 114-182, Boerne, Texas 78006.

8. No part of this Agreement may be assigned or delegated, and any attempted assignment of benefits or rights of delegation of duties or obligations shall be a breach of this Agreement.

9. This Agreement shall be subject to the laws and statutes of the State of Texas.

**10. INDEMNITY CLAUSE. THE ARTS AGREES TO AND SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSSES, CAUSES OF ACTION AND DAMAGES, SUITS, AND LIABILITY OF EVERY KIND INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY FEES, FOR INJURY TO OR DEATH TO ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY, ARISING FROM OR IN CONNECTION WITH THE OPERATIONS OF THE ARTS OR FOR ARTS, BY ITS OFFICERS, AGENTS, VOLUNTEERS AND EMPLOYEES THAT ARE CARRIED OUT IN FURTHERANCE OF THIS AGREEMENT. IT IS THE EXPRESSED INTENTION OF THE PARTIES HERETO, BOTH THE ARTS AND THE CITY, THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS ALSO INDEMNITY BY THE ARTS TO INDEMNIFY AND PROTECT THE CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE, WHERE THE NEGLIGENCE IS A CONCURRING CAUSE OF**

**THE INJURY, DEATH, OR DAMAGE. THIS DOES NOT EXTEND INDEMNITY BY THE ARTS FOR THE CITY'S OWN GROSS NEGLIGENCE OR WILLFUL OMMISSION.**

11. It is expressly agreed that by executing this Agreement with the ARTS, the City does not bind itself in the future as to any action of the City Council in connection with the alteration or repeal or amendment of the City of Boerne, Texas budget, fund allocation, or appropriation of funds, and in the event, for any reason, that the funds are not available, the City shall not be obligated under this Agreement to pay any funds of the City to the ARTS. It is also understood between the parties to the Agreement that in the event that no funds are available from the City of Boerne, Texas budget for any reason, this Agreement shall terminate, any provisions contained herein notwithstanding, and that the ARTS shall have no right or demand upon the City for funds payable under this Agreement if such funds are not available, for any reason.

12. Each party warrants and represents that it has approved this Agreement by motion duly adopted at a meeting of its governing body by a majority of those present and voting and that the chief executive officer of each party is duly authorized to enter into this Agreement on behalf of such party.

SIGNATURES APPEAR ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year first above written.

**CITY OF BOERNE, TEXAS**

BY: \_\_\_\_\_

—

BEN THATCHER  
City Manager

ATTEST:

\_\_\_\_\_  
LORI CARROLL  
City Secretary

**BOERNE PERFORMING ARTS**

BY: \_\_\_\_\_

CAROL SCHULTZ  
Board President

ATTEST:

BY: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_  
OFFICE HELD: \_\_\_\_\_